

No. 11553

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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BYRON W. WOOD,

Appellant,

vs.

PAUL GREIMANN,

Appellee.

---

Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Territory of Alaska, 'Fourth Division

FILED

JUN 13 1947

PAUL R. STUBBINS,

CLERK











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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD .

BAILEY E. BELL,

WARREN A. TAYLOR,

Fairbanks, Alaska,

Attorneys for Byron W. Wood, Appellant.

CECIL H. CLEGG,

Fairbanks, Alaska,

Attorney for Paul Greimann, Appellee.

## CERTIFICATE OF COMMISSIONER

United States of America,  
Territory of Alaska,  
Fourth Judicial Division—ss.

No. 5524

I, the undersigned, United States Commissioner for the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, do hereby Certify that the following documents are full, true and correct copies of the final order and other proceedings pertaining to the appeal of Paul Greimann, individually and as administrator of above entitled estate, namely:

Will.

Order Admitting Will to Probate and Appointing Administrator With Will Annexed.

Amended Petition for Removal of Administrator, Contest of Purported Will, to Set Aside Admission of Will to Probate and Application to Set for Hearing.

Motion to Dismiss Amended Petition of Byron W. Wood for Removal of Administrator, Etc.

Order Denying Motion to Dismiss Amended Petition of Byron W. Wood for Removal of Administrator, Etc.

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Order and Decree Revoking Order of March 6, 1945, Admitting to Probate a Certain Document Dated 9/26/31, and Envelope Attached Thereto, as Last Will and Testament of Decedent.

Notice of Appeal.

Exceptions of Paul Greimann, Administrator, to Decree Revoking Order Admitting to Probate a Certain Document as Decedent's Last Will and Testament, and Adverse Intermediate Rulings.

In the Matter of the Estate of J. M. Pearl, Deceased, Probate No. 1019 on file and of record in my office.

In Testimony Whereof, I have hereto subscribed my name and affixed my official seal at Fairbanks, Alaska, this 5th day of August, 1946.

[Seal]      /s/ ELEANOR M. ELY,  
United States Commissioner and Recorder, Fairbanks Precinct.

Filed in the District Court, Territory of Alaska, 4th Div., Aug. 15, 1946. John B. Hall, Clerk. [1\*]

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

## APPELLANT'S EXHIBIT A

Mount Alto Hospital, Washington, D. C.  
2650 Wisconsin Ave. 9-26-31.

Dear (Boy) Paul,—I had supposed that I would be quite a ways on my homeward bound journey by this time but fate deals elusively at times and handles our courses and actions in a curious and extremely decisive manner at times. I was discharged on Sept. 17th and expected to start home on the 18th but not having received the desired results at the Naval Hospital, Judge Wickersham and Dr. Cline head of the Veterans Bureau stopped the effect of my discharge and I was put in Mt. Alto Hosp. the greatest diagnostician center in the world, where they can call in any expert from anywhere in the world that they choose, to examine or treat you. It almost takes an act of Congress to get in here but when Dr. Cline puts his stamp on your entry it is done, but usually it is most difficult to get him to acquiesce in it. Well I am here and so much examining as I have gone thru has nearly worn me out. Last Thursday I had the worst spell from several standpoints that I have ever had. The headache, breastache, and stomach nausea, a resultant of their co-operative aches were very severe and the almost complete blindness that came upon me lasted more than 12 hours the longest spell I have ever had. Rev. Youel will remember that I had a similar spell in the Syria Mosque assembly room there at Pittsburg on June 2nd, but it lasted only about 4 hrs. I had 3 major and several minor ones



at the Naval hospital. They did not understand them at all so that is why I am here. Dr. Ballou, who has my case in charge, is a wonderful man—he goes right to the bottom of things—he is having me treated for chronic diarrhoea now but is looking after my eyes every day.

This is a wonderful place everything is so nice. The corpsmen, nurses and doctors are all so pleasant and cordial. Interested in your welfare and cure. Everything is so neat and clean. The dining room beautifully clean white spreads and table service attractive and orderly but the cooks and waitresses are negroes as all of the menial work is done by negroes.

I am sitting writing to you with a thermometer in my mouth as my temperature is to be taken every 2 hours. The nurse just brot it to me it is marked at 4 P.M. which is right at hand now. I started out to church today and got 3 blocks on my way when the eye pressure commenced and I turned back none too soon either for both the head and breast ache commenced and were quite severe when I arrived back at the hospital and jumped into bed. In about an hour the spell was gone. My head still aches but the vision dimming is all gone again.

We have to give reference as nearest of kin to be notified in case of death. I gave you my boy, and in case I die if they do operate I bequeath you my belongings and property all except \$100 to be given to Robert Galligher to help him in his education. I would ask to be buried here in Arlington Ceme-

tery. I do not expect to die but to be on my way home by the 20th of Oct. or soon after as they are going right after my case properly.

I saw in the paper today a heavy snow fell yesterday there in Fairbanks holding those fliers who came from Nome.

I hope this finds you all well and busy.

We have recently had two good rains and it is down in the 50s today so of course is nice and cool I hope it continues do. I hear a fellow preaching over the Radio. We can take down phones (ear phones) any time until 10 P.M. as there is a set attached to every bed. We hear everything of importance going on in the world. Recently we heard a wonderful program held over in Ireland. I heard the Pope address a [2] crowd in Rome. We heard Hoover address the Legion in Detroit. The finest musical programs so far have come from New York Berlin and Sweden. The finest church program comes from Maine every Sunday night at 9 to 9:45. I have listened to it all summer. Tell Rev. Youel about my being detained here for a time. I am so anxious to get home and see you all and the babes. It has been a long summer I tell you.

With love & best wishes to all

As ever

DAD J. M. PEARL.

*Paul Greimann*

**7**

J. M. Pearl  
Mt. Alto Hosp.  
Washington, D. C.

(Stamp)

Washington  
D. C.  
Sep. 27  
1030 PM  
1931

Paul Greimann  
Fairbanks,  
Alaska

Filed: February 20, 1945. Eleanor M. Ely, U. S.  
Commissioner & Ex Officio Probate Judge.

(Entered in Volume 1 of Wills, Page 448.) [3]

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In the Probate Court, Fairbanks Precinct, Fourth  
Judicial Division, Territory of Alaska

In the Matter of the Estate  
of

J. M. Pearl, Deceased

No. 5524

No. 1019

ORDER ADMITTING WILL TO PROBATE  
AND APPOINTING ADMINISTRATOR  
WITH WILL ANNEXED

The petition of Paul Greimann, of Fairbanks,  
Alaska, praying for his appointment as Adminis-

trator with Will Annexed of the Estate of J. M. Pearl, deceased, and for the admission to probate of that certain written document signed by said decedent on September 26, 1931, as the Last Will and Testament of said decedent, coming on to be heard, and it appearing to said Court that said J. M. Pearl died at Council Hill, Oklahoma, on July 8, 1944; that at the time of his death, and for a long time prior thereto, he was and had been a resident and inhabitant of Fairbanks Precinct, Alaska, and left estate therein and within the jurisdiction of this Court of the probable value of Ten Thousand Dollars; that he left a certain written document dated 9/26/31 signed by said decedent and written in his own handwriting, purporting to be his last will and testament, which said document was mailed to said Paul Greimann from Washington, D. C., on Sep. 27, 1931, in an envelope addressed in the handwriting of said decedent, which said document the Court now finds to be a valid holographic Will under the laws of the Territory of Alaska; that no person was named in said Will as Executor thereof; that decedent, at the time of executing said Will, was over the age of twenty-one years, and, in all respects, was competent to devise his estate; and that due notice of the hearing of the petition of Paul Greimann for appointment as Administrator with Will Annexed of the above entitled estate, as required by law, and pursuant to the Order of this Court regularly made and entered herein on February 20, 1945, has been given and proof thereof filed herein; that no person or persons have appeared at this hearing to object thereto or to assert

his or their right to the administration of said estate in opposition to the petition of said Paul Greimann; and that said [4] Paul Greimann is competent to act as such Administrator;

Now, Therefore:

It Is Hereby Ordered, Adjudged, and Decreed That the document hereinabove mentioned, and the envelope thereto attached, be, and is hereby, admitted to probate as the Last Will and Testament of said J. M. Pearl, deceased.

It Is Further Ordered, Adjudged, and Decreed That said petitioner, Paul Greimann, be, and he is hereby, appointed Administrator with Will Annexed of the Estate of J. M. Pearl, deceased, and that Letters of Administration with Will Annexed issue to him upon his taking the Oath required by law and executing a proper Bond in the sum of Ten Thousand Dollars to be approved by this Court.

Done in Open Court, at Fairbanks, Alaska, on this 6th day of March, 1945.

[Probate Court Seal]

ELEANOR M. ELY,

United States Commissioner and Ex Officio Probate Judge, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska.

Filed: March 6, 1945. Eleanor M. Ely, U. S. Commissioner & Ex Officio Probate Judge.

(Entered in Volume 17 of Probate Records, Page 407.) [5]

Before the United States Commissioner Ex Officio  
Probate Judge for the Fairbanks Precinct,  
Fourth Judicial Division, Territory of Alaska

In re: Estate of J. M. Pearl, Deceased

No. 1019

AMENDED PETITION FOR REMOVAL OF  
ADMINISTRATOR, CONTEST OF PUR-  
PORTED WILL, TO SET ASIDE ADMIS-  
SION OF WILL TO PROBATE AND AP-  
PLICATION TO SET FOR HEARING

Comes now Byron W. Wood of Council Hill, Oklahoma, a full brother of the deceased, J. M. Pearl, and one of the heirs at law, and moves the Court to set aside the order appointing Paul Greimann as administrator with will annexed, to set aside the order admitting the purported will to probate; for an order denying the final account; for an order holding the purported will to be void and ineffectual as a will; to set aside all orders made in this cause, and for an order setting this matter for hearing at a definite date allowing sufficient time for the taking of depositions in Oklahoma, and such other relief as the court deems necessary and proper, and for grounds alleges:

1.

That said purported will, alleged to have been executed in Washington, D. C., on the 26th day of September, 1931, is not a will and is insufficient in its content to amount to a will of any kind. Said instrument was not executed in the manner required by the laws of the District of Columbia at that time,



which laws were in full force and effect in the District of Columbia where it is alleged this purported will was executed. Said laws authorizing the executing of a valid will were in words and figures as follows to-wit:

“All wills and testaments shall be in writing and signed by the testator, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said testator by at least two credible witnesses, or else they shall be utterly void and of no effect; and, moreover, no devise or bequest, or any clause thereof, shall be revocable otherwise than by some other will or codicil in writing or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same by the testator himself or in his presence and by his direction and consent; but all devises and bequests shall remain and continue in force until the same be burned, canceled, torn, or obliterated by the testator or by his direction in the manner aforesaid, or unless the same be altered or revoked by some other will, testament, or codicil in writing, or other writing of the testator signed in the presence of at least two witnesses attesting the same, any former law or usage to the contrary notwithstanding. (Mar. 3, 1901, 31 Stat. 1444, ch. 854, § 1626.)” [6]

## 2.

That said instrument relied upon as a will herein is further void, ineffective and insufficient to confer

upon Paul Greiman, who is not a relative or heir of the deceased, J. M. Pearl, any right, power or authority to apply to this Court for an administration of the estate of J. M. Pearl; in that if said letter upon which Paul Greiman bases his right to inherit should be determined to be a holographic will, which this petitioner specifically denies, then this document is contingent and unenforceable due to the terms thereof in that the only clause is said letter or instrument in any way purporting to be a will or testament is contingent and contains these words "and in case I die, if they do operate," and that said contingency never came about; they did not operate on J. M. Pearl, and he did not die from the operation, but lived many years thereafter, and died from another separate and different cause. Said letter, if intended as testamentary at all, which is hereby denied, is only a contingency, based upon a belief of the said J. M. Pearl that he was about to be operated on, and was to take effect only in case of his death from said operation, which contingency never came about.

## 3.

This petitioner further alleges that he is the full brother of the deceased man, who was well known at Fairbanks, Alaska, under the name of J. M. Pearl, whose true name is J. Maurice Wood, and the discrepancy in the names was brought about by the following facts and circumstances to-wit: At his birth he was named J. Maurice Wood and was born a full brother, of this petitioner Byron



W. Wood; the father and mother of these two children were later divorced and the mother moved to California and there took the name of Pearl, and J. Maurice Wood living with her was called Maurice Wood Pearl and became known as such.

## 4.

Petitioner further alleges that Paul Greiman is no relation to the deceased, and was never adopted by the deceased, is not an heir at law of the deceased, and has no legal right, and has never had, to apply for letters of administration; therefore no legal right to act as administrator, and by so doing committed a legal fraud on the Court and all proceedings based thereon are void and should be set aside, vacated and held for naught. [7]

## 5.

That said petitioner is the duly qualified and acting administrator of the estate of the deceased Maurice O. W. Pearl, having been appointed by C. J. Blimm, Judge of the County Court of Oklahoma County, on the 31st day of July, 1945. A certified copy of the appointment is hereto attached marked exhibit "A" and made a part hereof, by reference.

## 6.

Petitioner further alleges that his brother J. Maurice Wood, known as Maurice Wood Pearl, also known as J. M. Pearl, was a veteran of the Spanish American War, was seventy-five years and sixteen days of age at the time of his death, which took place July 8, 1944, in the Veterans Hospital

at Muskogee, Oklahoma, which the said deceased was a resident and inhabitant of the State of Oklahoma and was buried at Fort Gibson, Oklahoma on July 9, 1944.

## 7.

Petitioner further alleges that the deceased J. Maurice Wood, also known as J. M. Pearl, was not of sound and disposing mind on the 26th day of September, 1931, and therefore any attempted disposition of his property by will or otherwise on or about that date would be void and insufficient to convey any interest in any of his property whatsoever.

## 8.

That at the time of the death of J. M. Pearl, also known as Maurice O. W. Pearl, he had a living wife whose name was Musetta Wood Pearl, and that both of them were residents and citizens of the State of Oklahoma, and that Section 107, Title 84, ch. 2, Oklahoma Statute Annotated, 1941, was in full force and effect and binding on all parties hereto. Which section is in words and figures as follows to-wit:

107. Effect of testator's marriage or issue as revocation.

“If after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survive him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will or in some way

mentioned therein as to show an intention not to make such provision; and no [8] other evidence to rebutt the presumption of such revocation can be received. If, after making a will, the testator marries, and, the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will.” (R.L. 1910) (8364)

That Musetta Wood Pearl filed suit in the District Court of the State of Oklahoma, on May 9, 1927, naming Maurice Orpheus Wood Pearl as defendant, same being cause number 2631-D, thereafter obtained a judgment granting a divorce on June 30, 1927. Said judgment being based upon service by publication, and thereafter on May 7, 1942, motion to vacate and set aside the purported decree was filed in said cause, and on the said 7th day of May, 1942, by mutual consent and based upon competent evidence said decree of June 30, 1927, was by the District Court of the State of Oklahoma, duly vacated, set aside and held for naught. From that time to the death of J. M. Pearl, also known as Maurice O. W. Pearl, he and Musetta Wood Pearl, were husband and wife, and lived and cohabited together as such in the State of Oklahoma.

## 9.

That there is no law in Alaska authorizing the disposal of property by a holographic will and the only way provided by the laws and statutes of

Alaska for the making of a valid will are sections 4611, 4612 and 4640 Compiled Laws of Alaska, and neither of these statutes has been complied with, and the writing offered for probate herein is void and not sufficient as a will or testament under the laws of the District of Columbia, the State of Oklahoma or the Territory of Alaska.

Wherefore this petitioner prays this Honorable Court to set aside, vacate and hold for naught the order appointing Paul Greiman administrator, and for an order setting aside all other orders made herein including the order admitting to probate the writing filed therein as a will and for an order appointing Julian A. Hurley, administrator for the Territory of Alaska, of this estate and that the Court make an order setting this petition, contest and objections for hearing at a time that will allow sufficient time for the taking of depositions in the State of Oklahoma, and for such other and further relief as the Court may deem proper.

BYRON W. WOODS,  
By BAILEY E. BELL,  
His Attorney. [9]

United States of America,  
Territory of Alaska—ss.

Bailey E. Bell, being first duly sworn, deposes and says: That he is attorney for Byron W. Woods, the petitioner above named; that he has read and knows the contents of the foregoing petition, and same is true as he verily believes; that he

makes this verification in behalf of Byron W. Woods for the reason that the said Byron W. Woods is not now in the Territory of Alaska, the place where said verification is made.

[Seal]                    BAILEY E. BELL.

Subscribed and sworn to before me this 27 day of December, 1945.

[N. P. Seal]    J. G. RIVERS,

Notary Public in and for the Territory of Alaska.

My commission expires: 1-18-1946.

Service of foregoing Amended Petition acknowledged this 27th day of December 1945.

CECIL H. CLEGG,

Atty. for Administrator with  
will Annexed  
Paul Greiman

## LETTERS OF ADMINISTRATION

State of Oklahoma,  
Oklahoma County—ss.

Byron W. Wood is hereby appointed administrator of the estate of Maurice O. W. Pearl, Deceased.

Witness C. J. Blinn, Judge of the County Court of Oklahoma County, State of Oklahoma, with the seal thereof affixed, the 31st day of July A. D., 1945.

[Seal]

.....  
Judge of the County Court.

State of Oklahoma,  
Oklahoma County—ss.

I, Byron W. Wood, do solemnly swear that I will perform according to law, the duties of administrator of the estate of Maurice O. W. Pearl Deceased, So help me God.

BYRON W. WOOD

Subscribed and sworn to before me, this 31st day of July, 1945.

[Seal]                    KATHRYN KEAHEY,  
Notary Public County Judge—Court Clerk.

By .....

Deputy.

My commission expires: Nov. 16, 1946. [10]

[Endorsed]: No. 20,524, County Court, Oklahoma County, State of Oklahoma. Letters of Administration.

I, Cliff Myers, Court Clerk for Oklahoma County, Okla. hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the County Court Clerk's office of Oklahoma County, Okla., this 31st day of July, 1945.

CLIFF MYERS,  
Court Clerk.

By OLA HOPE, Deputy.

[Seal]

EXHIBIT A

Filed: December 27, 1945. Eleanor M. Ely, U. S. Commissioner & Ex-Officio Probate Judge. [11]



In the Probate Court, Fairbanks Precinct, Fourth  
Judicial Division, Territory of Alaska

No. 1019

In the Matter of the Estate of  
J. M. PEARL, DECEASED

MOTION TO DISMISS AMENDED PETITION  
OF BYRON W. WOOD FOR REMOVAL OF  
ADMINISTRATOR ETC.

Comes now Paul Greimann, Administrator with  
Will Annexed of the above entitled estate, appear-  
ing specially for the purpose of this Motion only,  
and respectfully moves the Court to dismiss the  
Amended Petition of Byron W. Wood for the  
removal of Administrator etc. upon the following  
grounds, namely:

1. That no Notice of said Amended Petition, or  
of any other Petition by said Byron W. Wood  
herein, has been given to this Administrator as  
required by Section 4371 of the Compiled Laws of  
Alaska, 1933, nor has said Amended Petition or any  
Citation been served upon said Administrator as  
required by the laws of the Territory of Alaska.

2. That it appears from the face of said  
Amended Petition that the petitioner herein, Byron  
W. Wood, has no interest whatever in said estate  
or the proceeds thereof, as required by the laws of  
the Territory of Alaska, entitling him to file any  
Petition or Amended Petition herein, and that he  
is incompetent to seek the relief asked for by him  
or any relief whatsoever.

3. That this Court has no jurisdiction of the subject matter of said Amended Petition or of the person of said Administrator.

4. That no legal grounds are stated in said Amended Petition for the removal of said Administrator, as required by said Section 4371, CLA 1933.

5. That no legal grounds are stated in said Amended Petition warranting the setting aside of the Order of this Court admitting to probate the Will of said decedent or of any other Order entered in these proceedings, and that said Court has no jurisdiction so to do.

6. That no grounds whatever are stated in said Petition warranting [12] this Court in refusing to settle, approve, and confirm the Final Account of said Administrator as filed herein.

7. That said Amended Petition is not signed by any person whatsoever.

This Motion is made and based upon all the files and records herein and upon all the proceedings heretofore had in the above entitled matter.

CECIL H. CLEGG,

Attorney for Administrator with Will Annexed  
Appearing Specially for the Purposes of this  
Motion only and for no other purpose.

Due service of the foregoing Motion, and receipt of a copy thereof, acknowledged December 28, 1945.

BAILEY E. BELL,

Attorney for Byron W. Wood,  
Petitioner

Filed: December 28, 1945. Eleanor M. Ely, U. S. Commissioner & Ex Officio Probate Judge. [13]



[Title of Probate Court and Cause.]

ORDER DENYING MOTION TO DISMISS  
AMENDED PETITION OF BYRON W.  
WOOD FOR REMOVAL OF ADMINIS-  
TRATOR ETC.

This cause coming on for hearing on the third day of January, 1946, on the motion of Cecil H. Clegg, Attorney for Administrator with Will Annexed appearing specially for the purposes of the motion only, to Dismiss Amended Petition of Byron W. Wood for removal of administrator etc., and Paul Greimann, Administrator with Will Annexed of the above entitled estate, appearing in person and by his Attorney, Cecil H. Clegg, and Byron W. Woods appearing by his attorney Bailey E. Bell, and the Court having heard the arguments of counsel, and being fully advised in the premises and having taken the matter under advisement until January 5, 1946,

It Is Hereby Ordered that the Motion To Dismiss Amended Petition of Byron W. Wood for Removal of Administrator Etc., be. and the same is hereby, denied.

Dated at Fairbanks, Alaska, this 5th day of January, 1946.

[Probate Court Seal] ELEANOR M. ELY,  
United States Commissioner and ex-officio Probate  
Judge, Fairbanks Precinct.

[Endorsed]: Filed January 14, 1946.

(Entered in Volume 18 of Probate Records, Page 268) [14]

[Title of Probate Court and Cause.]

### DEMURRER

Comes now Paul Greimann, Administrator with Will Annexed of the above entitled estate, and legatee under the Will of decedent above named, and, reserving all his rights acquired by his special appearance herein and without waiving the same, demurs to the Amended Petition of Byron W. Wood upon the ground that it appears from the face of said Amended Petition:

1. That this Court has no jurisdiction of the person of Paul Greimann, either as Administrator with Will Annexed of said estate or as such legatee.

2. That this Court has no jurisdiction of the various subjects set forth in said Amended Petition, or of either of them.

3. That said Amended Petition is multifarious and too sweeping to be entertained by a Court of Probate, and several unrelated alleged grounds of relief are improperly united therein.

4. That said petitioner, Byron W. Wood, has no interest whatever in said estate or the proceeds thereof, as required by the laws of Alaska, which entitles him to file any Petition or Amended Petition herein seeking the relief prayed for by him, or any relief whatsoever, and that he is incompetent to seek such relief.

5. That said petitioner, Byron W. Wood, is not an heir, legatee, devisee, creditor, or other person interested in said estate and has no standing in this Court.

6. That said Amended Petition does not state facts sufficient to entitle said petitioner, Byron W. Wood, to the relief prayed for, or any relief.

7. That said Amended Petition does not state facts sufficient to entitle said petitioner to an Order of this Court for the removal of the present Administrator. [15]

8. That said Amended Petition does not state facts sufficient to entitle said petitioner to an Order of this Court setting aside the Order of this Court admitting to probate the Will of said decedent, or any other Order entered in these proceedings.

9. That said Amended Petition does not state facts sufficient to warrant this Court in refusing to settle, approve, and confirm the Final Account of the present Administrator.

10. That said Amended Petition does not state facts sufficient to warrant this Court in refusing to adjudicate the heirs of said decedent in conformity with the terms of his Will and the intention of said testator.

11. That said Amended Petition does not state facts sufficient to warrant this Court in entering an Order herein holding said Will to be void and ineffectual as a Will.

12. That said Amended Petition does not state facts sufficient to warrant the Court in appointing Julien A. Hurley, or any other person, as Administrator of the Estate of said decedent in the Territory of Alaska.

13. That said Amended Petition was not filed within the time prescribed by law.

CECIL H. CLEGG,  
Attorney for Paul Greimann, Administrator and  
legatee.

Due service of the foregoing Demurrer and receipt of a copy thereof acknowledged January 16th, 1946.

BAILEY E. BELL,  
Attorney for Byron W. Wood,  
Petitioner.

Filed: January 17, 1946. Eleanor M. Ely, U. S.  
Commissioner & Ex Officio Probate Judge. [16]

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No. 1019

In the Matter of the Estate of  
J. M. PEARL, Deceased, Probate

January 17, 1946.

The demurrer of Paul Greimann, Administrator with Will Annexed of the above entitled estate, to the Amended Petition of Byron W. Wood having been filed this 17th day of January, 1946, and having been submitted to the court without argument,

It is Ordered that the said demurrer be, and the same is overruled.

Done this 17th day of January, 1946.

ELEANOR M. ELY,  
United States Commissioner and ex officio Probate  
Judge.

(Filed for Record in Volume 18 of Probate, Page  
509) [17]

[Title of Probate Court and Cause.]

APPLICATION FOR COMMISSION TO  
TAKE DEPOSITIONS TO THE PRO-  
BATE COURT, FAIRBANKS PRECINCT,  
FOURTH JUDICIAL DIVISION, TERRI-  
TORY OF ALASKA:

Comes now Bailey E. Bell, Attorney for the Petitioner and Contestant of the will in the estate of J. M. Pearl, deceased, as set forth in the above-entitled action and cause, and petition the above-entitled Court for the issuance of a commission directed to Maude A. Moore, a Notary Public in and for the State of Oklahoma, to take the testimony, upon written interrogatories, of the following material witnesses on the part of the petitioner and contestant, to-wit:

Byron W. Wood, residing in Council Hill, Oklahoma, and Lista L. Fitch and H. C. Fitch, of 620 West Washington Street, Oklahoma City, Oklahoma, upon the ground and for the reason that said witnesses reside in the State of Oklahoma; and to secure the personal attendance of such witnesses would be a burdensome expense to petitioner; and that your petitioners are conversant with the facts at issue in the above-entitled action and believe that the petitioner has a good cause of contest against the Will and in support of all of the allegations of the petition.

Dated at Fairbanks, Alaska, this 8th day of February, 1946.

BAILEY E. BELL,

Attorney for Petitioner and  
Contestant

[Title of Probate Court and Cause.]

## OBJECTIONS TO ISSUANCE OF COMMISSION TO TAKE DEPOSITIONS

Comes now Paul Greimann, individually and as Administrator of the above entitled estate, and objects to the issuance of any Commission to take the depositions of any witnesses in the above entitled matter upon the following grounds:

1. Objects to the issuance of any Commission to take depositions of any witnesses upon the ground that the Compiled Laws of Alaska do not permit the issuance by any Probate Court in the Territory of Alaska of any Commission to take depositions of witnesses, and the issuance of a Commission and the taking of any depositions thereunder is unauthorized by any law.

2. Objects to the issuance of any Commission directed to Maude A. Moore, Notary Public, of Oklahoma City, Oklahoma, upon the ground that it is not shown she is a disinterested person, and upon the further ground that said Administrator is informed and believes that she is an employee of the Oklahoma attorney for Byron W. Wood, petitioner herein, and, therefore, has an interest in the result of this contest.

3. Objects to the issuance of any Commission to take the deposition of Byron W. Wood in Oklahoma City, Oklahoma, for the reason that said witness resides at Council Hill, Muskogee County, Oklahoma, which place is distant more than one hundred fifty miles from Oklahoma City aforesaid, and such



deposition, if taken, should be taken either at Council Hill or at Muskogee, the county seat of Muskogee County, before the Clerk of the County Court in and for Muskogee County, Oklahoma, which is distant not more than fifteen miles from Council Hill aforesaid.

CECIL H. CLEGG,

Attorney for Paul Greimann  
aforesaid [19]

Due service of the foregoing Objections, and receipt of a copy thereof, acknowledged February 19, 1946.

BAILEY E. BELL, NV

Attorney for Byron W. Wood,  
Petitioner

[Endorsed]: Filed February 19, 1946.

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[Title of Probate Court and Cause.]

**ORDER OVER-RULING OBJECTIONS TO  
ISSUANCE OF COMMISSION TO TAKE  
DEPOSITIONS, ETC.**

The hearing on the objections filed February 19, 1946, by the attorney for Paul Greimann, individually and as Administrator of the above entitled estate, having been held on the 26th of February, Cecil H. Clegg and Bailey E. Bell appearing, and the Court having continued the matter until this date,

It Is Ordered and Adjudged that the following

objections to the Issuance of Commission to Take Depositions be, and the same are over-ruled:

Objection No. 1 to the Issuance of any Commission to Take Depositions, etc.;

Objection No. 3 to the Issuance of any Commission to Take the Deposition of Byron W. Wood in Oklahoma City, Oklahoma, etc.;

It is Further Ordered and Adjudged that the following objections to Direct Interrogatories Proposed to be Propounded to Byron W. Wood be, and the same are over-ruled:

Objection No. 2, to Interrogatory No. 3, etc.;

Objection No. 5, to Interrogatory No. 6, etc.;

Objection No. 7, to Interrogatory No. 8, etc.;

Objection No. 8, to Interrogatory No. 9, etc.;

Objection No. 10, to Interrogatory No. 13, etc.;

Objection No. 11, to Interrogatory No. 17, etc.;

It Is Further Ordered and Adjudged that the following objections to Direct Interrogatories Proposed to be Propounded to H. C. Fitch be, and the same are over-ruled:

Objection No. 6, to Interrogatory No. 7, etc.;

Objection No. 7, to Interrogatory No. 9, etc.;

It Is Further Ordered and Adjudged that the following objections to Direct Interrogatories Pro-



posed to be Propounded to Lista L. Fitch be, and the same are over-ruled:

Objection No. 6, to Interrogatory No. 7, etc.;

Objection No. 7, to Interrogatory No. 9, etc.;

Objection No. 8, to Interrogatory No. 10, etc.;

Done this 28th day of February, 1946.

[Probate Court Seal] ELEANOR M. ELY,  
United States Commissioner and ex officio Probate  
Judge.

[Endorsed]: Filed February 28, 1946.

(Entered in Volume 18 of Probate Records, Page  
397) [22]

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[Title of Probate Court and Cause.]

### ANSWER

Comes now Paul Greimann, Administrator with Will Annexed of the above entitled estate, and legatee under the Will of decedent above named, and, for answer to the Amended Petition filed herein by Byron W. Wood, admits, denies, and alleges as follows:

#### I.

Denies each and every allegation contained in paragraph 1 of said Amended Petition, and the whole thereof, and, in this behalf, alleges that on the 26th day of September, 1931, said J. M. Pearl was, and had been for many years prior thereto, a bona fide resident and inhabitant of the Territory of Alaska and had his legal domicile therein, and

had no property, real or personal, in the District of Columbia.

II.

Denies each and every allegation contained in paragraph 2 of said Amended Petition, and the whole thereof, except that he admits he is not a relative of J. M. Pearl, deceased.

III.

Denies each and every allegation contained in paragraph 3 of said Amended Petition, and the whole thereof, except that he admits J. M. Pearl was well known at Fairbanks, Alaska.

IV.

Denies each and every allegation contained in paragraph 4, and the whole of said paragraph, except that he admits he is no relation to the above named decedent and was never adopted by said decedent.

V.

Denies each and every allegation contained in paragraph 5, and the whole of said paragraph.

VI.

Denies each and every allegation contained in paragraph 6, and the whole of said paragraph, except the allegation that said J. M. Pearl died on July 8, 1944. [23]

VII.

Denies each and every allegation contained in paragraph 7, and the whole of said paragraph.

## VIII.

Denies each and every allegation contained in paragraph 8, and the whole of said paragraph, and, in this behalf, alleges that at the time of his death, to wit, on July 8, 1944, said J. M. Pearl was, and for many years prior thereto had been, a bona fide resident and inhabitant of the Territory of Alaska and had his legal domicile therein.

## IX.

Denies each and every allegation contained in paragraph 9, and the whole of said paragraph.

Further answering said Amended Petition, Paul Greimann as Administrator aforesaid and for himself as legatee under said Will of said J. M. Pearl, deceased, alleges as follows:

## I.

That said Paul Greimann, ever since he was of the age of eighteen years, in Chicago, Illinois, had been the intimate friend, and for many years in Fairbanks, Alaska, was, the business associate, of said decedent, J. M. Pearl; that this close friendship continued unbroken up to the time decedent left Fairbanks in December, 1941; that they worked and lived together in Chicago, Illinois, prior to coming to Alaska on or about September 1, 1923; that for many years in the town of Fairbanks, Alaska, they were equal partners in the conduct of a garage business under the name and style of Pearl & Pearl; that from the time said decedent and said Paul Greimann arrived in

Fairbanks, Alaska, on or about September 1, 1923, and for many years thereafter, said Paul Greimann was commonly known in Fairbanks, Alaska, as Paul Greimann Pearl, due to the fact that said decedent usually addressed him as "Son" and requested him to use the name of "Pearl"; that said decedent was approximately thirty years older than said Paul Greimann.

## II.

That said decedent during the month of December, 1941, left Fairbanks, Alaska, to secure needed medical attention in the States; that he never abandoned his permanent domicile in the Territory of Alaska, and, upon leaving the Territory at the time aforesaid, he [24] fully intended to return to Alaska, and continued in such intention as long as he lived; that shortly after leaving Fairbanks, Alaska, he suffered a stroke of paralysis and became mentally incompetent and was thereby prevented from returning to his home in Fairbanks, Alaska.

Wherefore, your Administrator and legatee under said Will prays that said Amended Petition of Byron W. Wood be denied and dismissed as to all matters and things for which relief is sought and that said Administrator and legatee have his Final Account as such Administrator approved and confirmed, and that the proceeds of said estate be adjudicated to him and Robert Gallagher as the legal beneficiaries under said Will of decedent, and for his costs and disbursements and such other and

further relief as to this Court may seem meet and just in the premises.

CECIL H. CLEGG,

Attorney for Paul Greimann, Administrator with Will Annexed of the Estate of J. M. Pearl, deceased, and legatee under the Will of said decedent.

United States of America,  
Territory of Alaska,  
Fourth Judicial Division—ss.

Paul Greimann, being first duly sworn, on oath deposes and says; I am the Administrator with Will Annexed of the Estate of J. M. Pearl, deceased, and am one of the legatees named in the Will of said decedent; that I have read the foregoing Answer, know the contents thereof, and the same is true as I verily believe.

PAUL GREIMANN,

Subscribed and sworn to before me this 17th day of January, 1946.

[N. P. Seal] CECIL H. CLEGG,

Notary Public for Alaska

My commission expires April 30th, 1946.

Due service of the foregoing Answer, and receipt of a copy thereof, acknowledged January 21st, 1946.

BAILEY E. BELL,

Attorney for Byron W. Wood,  
Petitioner.

[Endorsed]: Filed January 21, 1946. [25]

[Title of Probate Court and Cause.]

REPLY

Comes now the petitioner, Byron W. Wood, and for Reply to the Answer filed by Paul Greimann, Administrator with Will Annexed and alleges and states as follows to-wit:

I.

He denies each and every allegation of affirmative matter set forth in paragraph I of the Answer, and the whole thereof.

II.

This Petitioner denies that J. M. Pearl was at the time of his death, and for many years prior thereto, a bona fide resident and inhabitant of the Territory of Alaska, and denies that his legal domicile was in the Territory of Alaska.

III.

This Petitioner is not sufficiently advised to form a belief as to the truth set forth in paragraph I on page 2 of said Answer, and the paragraph II on page 3 of said answer, and therefore denies each and every allegation therein contained, and the whole thereof.

BAILEY E. BELL,

Attorney for Petitioner.

United States of America,  
Territory of Alaska—ss.

Bailey E. Bell, being first duly sworn, deposes and says: That he is the attorney for Byron W. Wood, the petitioner above named; and that he has



read and knows the contents of the foregoing petition, and same is true as he verily believes; that he makes this verification in behalf of Byron W. Wood for the reason that the said Byron W. Wood is not now in the Territory of Alaska, the place where said verification is made.

BAILEY E. BELL,

Subscribed and sworn to before me this 8th day of February, 1946.

[N. P. Seal] J. G. RIVERS,

Notary Public in and for the Territory of Alaska.  
My Commission Expires: 2/18/1946. [26]

Service of foregoing reply acknowledged this 8th day of February, 1946.

CECIL H. CLEGG,

Attorney for Paul Greiman,  
Administrator.

[Endorsed]: Filed February 8, 1946. [27]

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[Title of Probate Court and Cause.]

ORDER and DECREE REVOKING ORDER OF MARCH 6, 1945, ADMITTING TO PROBATE A CERTAIN DOCUMENT DATED 9/26/31, and ENVELOPE ATTACHED THERETO, AS LAST WILL AND TESTAMENT OF DECEDENT.

This matter coming on regularly for hearing on June 17, 1946, before the above entitled Court upon the issues raised by the Amended Petition of Byron W. Wood, of Council Hill, Oklahoma, filed herein,

the Answer thereto of Paul Greimann, Administrator with Will Annexed of the above entitled estate, and the Reply of said petitioner. Said petitioner, Byron W. Wood, was represented by his attorney, Bailey E. Bell, and said Administrator appeared in person and was represented by his attorney, Cecil H. Clegg. Certain oral and documentary proofs and evidence was admitted by the respective parties, and arguments were had thereon. Whereupon said Court took said cause under advisement until the 16th day of July, 1946, at the hour of three o'clock P. M., at which time said Court announced its decision orally, and does now, in accordance therewith, find as follows:

1. That said decedent, J. M. Pearl, died on July 8, 1944, in the State of Oklahoma, and left a certain document, dated 9/26/31 at Washington, D. C., signed by said decedent and written in his own handwriting, purporting to be his last will and testament, which said document was mailed to said Paul Greimann from Washington, D. C. on September 27, 1931, in an envelope addressed in the handwriting of said decedent, and which said document, together with said envelope, was on March 6, 1945, admitted to probate herein as the last will and testament of said J. M. Pearl, deceased.

2. That on the 18th day of December, 1945, one Byron W. Wood, of Council Hill, Oklahoma, filed herein a Petition for the removal of said Greimann as Administrator with Will Annexed of said estate and to set aside all Orders made by this Court in this proceeding, including the Order admitting to



probate the document hereinabove [28] described; and that thereafter, on December 27, 1945, said Byron W. Wood filed herein an Amended Petition of the same general tenor and character as his original Petition hereinabove referred to.

3. That the purported Will heretofore admitted to probate in these proceedings is not an absolute last will and testament of said decedent, J. M. Pearl, but is a conditional Will and is of no legal force or effect and is not entitled to probate as the last will and testament of said J. M. Pearl.

4. That an Order should be made herein revoking that certain Order entered herein on March 6, 1945, admitting to probate said document above mentioned as the last will and testament of said J. M. Pearl, deceased, and denying, in all other respects, the Amended Petition of said Byron W. Wood.

Now, Therefore,

It Is Hereby Ordered, Adjudged, and Decreed That the following portion of that certain Order made and entered herein on the 6th day of March, 1945, entitled "Order Admitting Will to Probate and appointing Administrator with Will Annexed", to wit:

"It Is Hereby Ordered, Adjudged, and Decreed That the document hereinabove mentioned, and the envelope thereto attached, be, and is hereby, admitted to probate as the Last Will and Testament of said J. M. Pearl, deceased."

be, and the same is hereby, set aside and annulled, and that, in all other respects, the Amended Petition of Byron W. Wood filed herein on December 27, 1945, be, and the same is hereby, denied.

Dated at Fairbanks, Alaska, this 24th day of July, 1946.

[Probate Court]

[Seal] ELEANOR M. ELY,  
United States Commissioner and ex officio Probate  
Judge, Fairbanks Precinct, Fourth Judicial  
Division, Territory of Alaska.

[Endorsed]: Filed July 24, 1946. [29]

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[Title of Probate Court and Cause.]

#### NOTICE OF APPEAL

To Byron W. Wood, Petitioner, and Bailey E. Bell,  
his attorney:

You, and each of you, will please take notice that Paul Greimann, individually and as Administrator with the Will Annexed of the Estate of J. M. Pearl, deceased, has appealed, and does hereby appeal, to the Honorable District Court for the Territory of Alaska, Fourth Judicial Division, sitting at Fairbanks, from that certain Order and Decree made and entered by the above entitled Probate Court in the above entitled proceedings on the 24th day of July, 1946, wherein said Probate Court found

the Will theretofore admitted to probate on March 6, 1945, as the last will and testament of said decedent, J. M. Pearl, to be a conditional Will and of no legal force or effect and not entitled to probate as the last will and testament of said decedent, and wherein said Probate Court set aside, annulled, and revoked that part of said Order of March 6, 1945, admitting said Will to probate herein, and that he also appeals from all adverse orders and rulings of said Probate Court made in said proceedings as more particularly set forth in the Exceptions filed herein by appellant.

Dated at Fairbanks, Alaska, this 25th day of July, 1946.

CECIL H. CLEGG,

Attorney for Appellant, Paul  
Greimann, Individually  
and as Administrator  
with Will Annexed of  
the Estate of J. M. Pearl,  
deceased.

Due service of the foregoing Notice of Appeal, and receipt of a copy hereof, acknowledged July 26th, 1946.

BAILEY E. BELL,

Attorney for Petitioner  
Byron W. Wood.

PAUL GREIMANN,

Appellant.

[Endorsed]: Filed July 26, 1946. [30]

[Title of Probate Court and Cause.]

EXCEPTIONS OF PAUL GREIMANN, ADMINISTRATOR, TO DECREE REVOKING ORDER ADMITTING TO PROBATE A CERTAIN DOCUMENT AS DECEDENT'S LAST WILL AND TESTAMENT, AND ADVERSE INTERMEDIATE RULINGS

Comes now Paul Greimann, individually and as Administrator with Will Annexed of the above entitled estate, hereinafter designated "Appellant", and objects and excepts to the Order and Decree Revoking Order of March 6, 1945, Admitting Will to Probate, made and entered herein on July 24, 1946, and all adverse intermediate orders in the proceedings heretofore had before said Court in the above entitled cause, in the following particulars, namely:

1. He excepts to the action of said Probate Court in refusing to dismiss the Amended Petition of Byron W. Wood and entering an Order herein on January 5, 1946, denying appellant's Motion to Dismiss Amended Petition filed in said Court on December 28, 1945, upon the ground that the ruling of said Court was not authorized by law and was against the law and contrary thereto, to which ruling appellant duly excepted.

2. He excepts to the action of said Probate Court in refusing to sustain the Demurrer of Appellant to the Amended Petition of said Byron W. Wood upon the ground that said Demurrer was

well founded in law and the ruling of said Probate Court was against the law in the premises and contrary thereto, to which ruling appellant duly excepted.

3. He excepts to the action of said Probate Court in requiring appellant to answer said Amended Petition of said Byron W. Wood upon the ground that said Court was without jurisdiction so to do, and said ruling was not authorized by law but was contrary thereto, to which ruling appellant duly excepted. [31]

4. He excepts to the action of said Probate Court in overruling the objections of appellant to the issuance of a Commission to take the depositions of witnesses residing outside of Alaska, viz., Byron W. Wood of Council Hill, Oklahoma, Lista L. Fitch and H. C. Fitch, both residing at 620 West Washington Street, Oklahoma City, Oklahoma, upon the ground that said Court has no authority in law to issue a Commission to take depositions of witnesses outside of Alaska, and had no jurisdiction to enter said Order and that the same was against the law and contrary thereto, to which ruling appellant duly excepted.

5. He excepts to the action of said Probate Court in overruling the objections of appellant to the introduction by said Byron W. Wood and in behalf of said Wood upon the hearing of the respective depositions of said witnesses specified in paragraph 4 hereof, upon the ground that the ruling of said Court was unauthorized by law and con-

trary thereto, to which ruling appellant duly excepted.

6. He excepts to the Order and Decree entered in said cause by said Probate Court on July 24, 1946, setting aside and annulling that certain portion of the Order of said Court made and entered in said cause on March 6, 1945, admitting to probate the document mentioned in said Order, and the attached envelope, as the Last Will and Testament of J. M. Pearl, deceased, upon the ground that said Order and Decree was made and entered against the law and contrary thereto, to which Order and Decree appellant duly excepted.

7. He excepts to the finding numbered 3 contained in said Order and Decree of July 24, 1946, to wit: "3. That the purported Will heretofore admitted to probate in these proceedings is not an absolute last will and testament of said decedent, J. M. Pearl, but is a conditional will and is of no legal force or effect and is not entitled to probate as the last will and testament of said J. M. Pearl", upon the ground that the same was made and entered against the law and the evidence in the premises, and contrary thereto, to which finding appellant duly excepted.

Wherefore, appellant prays for a Judgment and Decree of the appellate Court reversing said cause and sustaining the validity of the last will and testament of said decedent heretofore admitted to probate [32] by the Order of said Probate Court on March 6, 1945, and for such other and further re-



lief as to said appellate Court may seem just and equitable in the premises.

CECIL H. CLEGG,

Attorney for Appellant.

Due service of the foregoing Exceptions, and receipt of a copy thereof, acknowledged July 26th, 1946.

BAILEY E. BELL,

Attorney for Petitioner

Byron W. Wood.

[Endorsed]: Filed July 26, 1946. [33]

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5524

In the Matter of the Estate of  
J. M. PEARL, Deceased.

### ORDER TO DRAW JUDGMENT

The trial of this cause on appeal from the Probate Court, Fairbanks Precinct, having been had on the 2nd day of October, 1946, and the matter having been taken under advisement, the Court, now being fully advised in the premises, announced that he found for the appellant and directed that counsel for the appellant draw a Judgment in accordance with the Opinion filed in this cause.

\* \* \*

Oct. 9, 1946.

Entered in Court Journal No. 34, Page 170. [61]



In the District Court for the Territory of Alaska,  
Fourth Division

No. 5524

In the Matter of the Estate of  
J. M. PEARL, Deceased.

### DECREE

Be It Remembered That this cause came on to be heard before the above entitled Court on the 2nd day of October, 1946, appellant, Paul Greimann, individually and as Administrator with Will Annexed of the Estate of J. M. Pearl, deceased, appearing in person and by his attorney, Cecil H. Clegg, and appellee, Byron W. Wood, petitioner, appearing by his attorney, Warren A. Taylor. Appellant presented certain oral and documentary testimony and evidence and rested, and petitioner Byron W. Wood, as appellee, offered none. Thereupon said cause was argued before said Court by respective counsel and was taken under advisement by said Court. Thereafter, on October 9, 1946, said Court, having considered the arguments of counsel and the law and evidence upon the issue of whether or not the letter of decedent hereinafter described constitutes a contingent or absolute Will, filed its written opinion herein holding in favor of appellant and against appellee-petitioner.

Wherefore, by virtue of the law and the premises,  
It Is Hereby Ordered, Adjudged, and Decreed  
That the letter dated 9-26-31 written by J. M. Pearl, decedent above named, in his own handwriting,

signed by him, and mailed by him from Washington, D. C., on September 27, 1931, addressed to Paul Greimann, Fairbanks, Alaska, is the true and valid Last Will and Testament of said decedent, J. M. Pearl, and is entitled to probate as such under the laws of Alaska, as heretofore adjudicated on the 6th day of March, 1945, [62] by the Probate Court for the Fairbanks Precinct, Alaska; and said Probate Court is hereby ordered to reinstate said adjudication of March 6, 1945;

It Is Further Ordered, Adjudged, and Decreed That the Order and Decree of said Probate Court made and entered on the 24th day of July, 1946, in the above entitled probate proceeding pending in said Probate Court, numbered 1019, revoking, vacating, and setting aside said Order of March 6, 1945, admitting said letter to probate as the last will and testament of said decedent, J. M. Pearl, upon the ground that said letter was invalid as an absolute will of decedent and was merely a contingent or conditional Will in its terms and intent, be, and the same is hereby, vacated, set aside, and held for naught.

It Is Further Ordered, Adjudged, and Decreed That the finding and decree of said Probate Court to the effect that said letter is a conditional will and is of no legal force or effect as a last will and testament and, therefore, not entitled to probate as the last will and testament of said J. M. Pearl, deceased, be, and the same is hereby, reversed and set aside.

It Is Further Ordered and Adjudged That said

appellant, Paul Greimann, have and recover his costs and disbursements upon said appeal proceeding, taxed by the Clerk of this Court at the sum of \$63.25.

It Is Further Ordered That the Clerk of this Court deliver to said Probate Court a true copy of this Decree, duly certified by said Clerk.

Dated at Fairbanks, Alaska, this 14th day of October, 1946.

HARRY E. PRATT,  
District Judge.

Receipt of a copy of the foregoing Decree acknowledged October 11, 1946.

WARREN A. TAYLOR  
Attorney for Byron W. Wood,  
Appellee.  
(M)

Entered in Court Journal No. 34, Page 171.

[Endorsed]: Filed Oct. 14, 1946. [63]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Name and Address of Appellant: Byron W. Wood, Council Hill, Oklahoma.

Name and Address of Appellant's Attorneys: Bailey E. Bell, Fairbanks, Alaska; Warren A. Taylor, Fairbanks, Alaska.

Name and Address of Appellee: Paul Greimann, Fairbanks, Alaska.

Name and Address of Appellee's Attorney: Cecil H. Clegg, Fairbanks, Alaska.

Notice Is Hereby Given that Byron W. Wood, petitioner in the above entitled cause does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit of the United States of America, from a Decree entered in the above entitled action on the 14th day of October, 1946, and for grounds of appeal allege as follows:

I.

That the Court erred in decreeing a letter dated 9/26/31, written by J. M. Pearl to be the true and valid Last Will and Testament of J. M. Pearl, Deceased, and entitled to probate under the laws of the Territory of Alaska.

II.

That the Court erred in vacating and setting aside that certain order of the Probate Court in the said cause, which said order of the probate Court held that the letter, dated 9-26-31 written by J. M. Pearl was a contingent or conditional will and not entitled to probate as the Last Will and Testament of the said decedent, J. M. Pearl. [64]

III.

That the Court erred in reversing and setting aside the findings and decree of said probate court to the effect that the said letter was a conditional or contingent will and was of no legal force and

effect as the Last Will and Testament of J. M. Pearl.

Dated at Fairbanks, Alaska, this 18th day of October 1946.

/s/ WARREN A. TAYLOR,  
Of Plaintiff's Attorneys.

Service of copy acknowledged this 21st day of October, 1946.

CECIL H. CLEGG, lpc  
Attorney for Paul Greimann.

[Endorsed]: Filed Oct. 21, 1946. [65]

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[Title of District Court and Cause.]

PETITION FOR ALLOWANCE  
OF APPEAL

The petitioner in the above entitled cause, considering himself aggrieved by the decree entered in the said cause on the 14th day of October, 1946, in favor of the Administrator of the Estate of J. M. Pearl, Deceased, which said decree reversed and set aside the Order and Decree of the Probate Court for the Territory of Alaska, Fourth Division, Fairbanks Precinct which found and decreed that a certain letter written by the decedent, J. M. Pearl, was not a true and valid will of deceased; and which order and decree of said probate court revoked its previous order admitting the said letter to probate as the Last Will and Testament of deceased. That

the District Court for the Territory of Alaska further ordered and decreed that the said letter was a true and valid will of the decedent, J. M. Pearl, and entitled to probate under the laws of the Territory of Alaska. By said Decree the issues were determined in favor of the Administrator of said Estate of Decedent and against the petitioner and appellant, Byron W. Wood.

The petitioner having given due notice of appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified and set forth, does respectfully pray that his said appeal may be allowed, and that a transcript of the records, proceedings and papers upon which said decree was made and entered, be duly authenticated by the Clerk of this Court, and sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California; and this said petitioner, Byron W. Wood, does further pray that said decree aforementioned be corrected, set aside, reversed and a new trial ordered, and that the Court fix the amount of appeal bond to be filed herein. [66]

Dated at Fairbanks, Alaska, this 19th day of December, 1946.

/s/ WARREN A. TAYLOR,  
Of Attorneys for Petitioner.

[Endorsed]: Filed Dec. 19, 1946. [67]



[Title of District Court and Cause.]

ORDER ALLOWING APPEAL AND  
FIXING APPEAL BOND

On this 2nd day of October, 1946, the same being one of the days of the General March, 1946, Term of this Court, this cause came on regularly to be heard upon the petition of Byron W. Wood for the allowance of an appeal in behalf of the said petitioner from the decree entered in the said cause on the 14th day of May, 1946, which said decree reversed a decree of the Probate Court for the Territory of Alaska, Fourth Division, Fairbanks Precinct, in the said matter, and also fixing the amount of appeal bond on the said appeal, and the place of hearing said appeal, and the said Court being fully advised in the premises it hereby finds that the amount of the appeal bond should be Two Hundred Fifty (\$250.00) Dollars, Now, Therefore,

It Is Hereby Ordered that the appeal of said petitioner from the decree entered herein on the 14th day of October, 1946, be, and the same is allowed, to the United States Circuit Court of Appeals for the Ninth Circuit, and that a certified transcript of records, proceedings, orders, judgment, testimony, and all other proceedings in said matter on which said decree appealed from is based, be transferred, duly authenticated to the United States Circuit Court of Appeals for the Ninth Circuit and therein filed and said cause docketed on or before thirty (30) days from this date, to be heard at San Francisco, California, and



It Is Further Ordered that the amount of the Appeal Bond be, and is hereby fixed at the sum of \$250.00; said bond to be submitted and approved by the undersigned Judge of this Court; and

It Is Further Ordered that in preparing and printing the record on appeal in said cause, the title of the Court and cause shall be printed on the first page of said record, and that thereafter it may be omitted, and, in place thereof, the words "Title of Court [68] and Cause" may be inserted, and that all endorsements on all papers may be omitted except the Clerk's filing marks and admission of service.

Done in Chambers on this 19th day of December, 1946.

HARRY E. PRATT,  
District Judge.

Entered in Court Journal Dec. 19, 1946, No. 34,  
Page 314-315.

[Endorsed]: Filed Dec. 19, 1946. [69]

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[Title of District Court and Cause.]

### APPEAL BOND

Know All Men By These Presents: That we, Byron W. Wood, as principal, and Gradelle Leigh and Jack Allman as sureties, are held and firmly bound unto the United States in the sum of \$250.00, to be paid to the United States of America; to which

payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 19th day of December, 1946.

Whereas, lately at a District Court of the United States for the Fourth Division of the Territory of Alaska, in a suit pending in said Court in which Byron W. Wood was petitioner, and Paul Greimann, as administrator of the Estate of J. M. Pearl, was respondent, a judgment was rendered against the said petitioner in said matter, and the said petitioner having filed in said Court a notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, at a session of said Court of Appeals to be held at San Francisco, in the State of California.

Now, the condition of the above obligation is such: That if the said Byron W. Wood shall prosecute said appeal to effect, and to pay all costs that may be taxed against him, if for any reason the appeal is dismissed, or if the judgment is affirmed, then in that event the above obligation to be void; otherwise to remain in full force and effect.

Signed, sealed and acknowledged this 19th day of December, 1946.

/s/ BYRON M. WOOD,  
By /s/ WARREN A. TAYLOR,  
Attorney,  
Principal.

/s/ JACK ALLMAN, (LS)

/s/ GRADELLE LEIGH (LS)

United States of America,  
Territory of Alaska,  
Fourth Division—ss.

Gradelle Leigh and Jack Allman, being first duly sworn, each for himself and not one for the other, deposes and says: That he is a freeholder in the Territory of Alaska and is worth the sum of \$500.00, exclusive of property exempt from execution, over and above all debts and liabilities.

/s/ JACK ALLMAN,

/s/ GRADELLE LEIGH.

Subscribed and sworn to before me this 19th day of December, 1946.

[Seal] /s/ WARREN A. TAYLOR,

Notary Public for Alaska.

My commission expires 8/11/47.

Approved this 21st day of February, 1947.

HARRY E. PRATT,

District Judge.

[Endorsed]: Filed Dec. 19, 1946. [71]

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In the United States Circuit Court of Appeals  
for the Ninth Circuit  
At San Francisco, California  
No. 5524

In the Matter of the Estate of  
J. M. PEARL, Deceased.

ORDER EXTENDING TIME TO FILE, RE-  
CORD AND DOCKET CAUSE ON AP-  
PEAL

On motion of the appellant in the above entitled

cause, by Warren A. Taylor, one of his attorneys, for an order extending the time to file, record and docket the said cause on appeal in this court, it appears to this Court that by reason of the absence of counsel from the Territory of Alaska, and the absence of the District Judge for the Territory of Alaska, Fourth Division from the Territory of Alaska renders it impossible for the said cause to be filed, recorded and docketed in this Court within the time allowed by law; and the Court being fully advised in the premises and good cause appearing therefor:

It Is Hereby Ordered that the time within which the record on appeal in this case shall be deposited and filed in this Court with the Clerk thereof, and said cause docketed therein, be, and the same is extended and enlarged to and including the 1st day of March, 1947.

Dated at San Francisco, California, this 8th day of January, 1947.

FRANCIS A. GARRECHT,  
United States Circuit Judge.

[Endorsed]: Filed C.C.A. Jan. 8, 1947. Paul P. O'Brien, Clerk.

[Endorsed]: Filed D.C. Feb. 6, 1947. John B. Hall, Clerk; by Olga T. Steger, Deputy. [72]

In the District Court for the Territory of Alaska,  
Fourth Judicial Division

No. 5524

In the Matter of the Estate of  
J. M. PEARL, Deceased.

### ASSIGNMENT OF ERRORS

Comes now Byron W. Wood of Council Hill, Oklahoma, a full brother of the deceased, J. M. Pearl, and one of the heirs at law, and for Assignment of Errors in this case alleges and states:

#### I.

That the Court erred in taking jurisdiction in this case as on appeal for the reason that the judgment in the probate court of July 24, 1946, holding the letter as contingent and not a final will, had become final and no appeal was properly taken therefrom.

#### II.

That the Court erred in taking jurisdiction of this case as on appeal when no appeal was properly taken from the Judgment and Decree of the Probate Court under date of July 24, 1946, by anyone having authority or right to take an appeal.

#### III.

That the Court erred in taking jurisdiction in this case as if a proper appeal had been taken in that the record filed in this case in the United States District Court for the Territory of Alaska, Fourth Judicial Division, was insufficient to confer on said Court appellate jurisdiction in this to-wit: The

record contemplated by the Compiled Laws of Alaska, 1933, to be filed in the United States District Court on Appeals, in Probate cases Chapter CLIV Section 4571, 4572, 4573 and 4574 was never complied with as [73] the record did not contain the following documents and instruments upon which the United States Commissioner based her judgment of July 24, 1946 on, to-wit:

a. The Depositions of Byron W. Wood, Lesta L. Fitch and H. C. Fitch taken in Oklahoma City, Oklahoma, in this cause in which it was established by the uncontradicted testimony that Mr. J. M. Pearl, now deceased, was living with his wife in Oklahoma City for quite some time before he died.

b. The Certified copy of the judgment of the District Court of Oklahoma County, Oklahoma, showing that the divorce decree between the now deceased, J. M. Pearl, and Musetta Wood Pearl, his wife, had been vacated and set aside, restoring them as man and wife; which decree was dated 7th day of May, 1942;

c. Certified and Authenticated copy of the Laws of the District of Columbia as introduced in the trial before the United States Commissioner in this case; which acts controlled the making of wills in the District of Columbia.

d. The Certified copy of the death certificate.

e. The Certified copies of the Letters of Administration issued to Byron W. Wood, by



the County Court of Oklahoma County, Oklahoma, in the estate of Maurice O. W. Pearl, who it is shown to be the same man as J. M. Pearl, dated in Oklahoma County July 31, 1945.

#### IV.

The Court further erred in making an order reversing the judgment and order made by the United States Commissioner Ex-Officio Probate Judge on July 24, 1946, in which the said Probate Judge made the following findings, judgment and order to-wit:

That the purported Will heretofore admitted to probate in these proceedings is not an absolute last will and testament of said decedent, J. M. Pearl, but is a conditional Will and is of no legal force or effect and is not entitled to probate as the last will and testament of said J. M. Pearl. [74]

That an Order should be made herein revoking that certain Order entered herein on March 6, 1945, admitting to probate said document above mentioned as the last will and testament of said J. M. Pearl, deceased, and denying, in all other respects, the Amended Petition of said Byron W. Wood.

Now, Therefore,

It Is Hereby Ordered, Adjudged, and Decreed That the following portion of that certain Order made and entered herein on the 6th day of March, 1945, entitled "Order Admitting Will to Probate and appointing Administrator with Will Annexed", to-wit:



“It Is Hereby Ordered, Adjudged, and Decreed That the document hereinabove mentioned, and the envelope thereto attached, be, and is hereby, admitted to probate as the Last Will and Testament of said J. M. Pearl, deceased.”

be, and the same is hereby, set aside and annulled, and that, in all other respects, the Amended Petition of Byron W. Wood filed herein on December 27, 1945, be, and the same is hereby, denied.

Dated at Fairbanks, Alaska, this 24th day of July, 1946.”

[Probate Court Seal] ELEANOR M. ELY,  
United States Commissioner and ex-officio Probate  
Judge, Fairbanks Precinct, Fourth Judicial  
Division, Territory of Alaska.

Filed: July 24, 1946. Eleanor M. Ely, U. S.  
Commissioner & Ex-Officio Probate Judge.

V.

The Court further erred in making and entering the Decree on October 14, 1946, which is as follows:

“No. 5524

DECREE

Be It Remembered That this cause came on to be heard before the above entitled Court on the 2nd day of October, 1946, appellant, Paul Greimann, individually and as Administrator with Will Annexed of the Estate of J. M. Pearl, deceased, appearing in person and by his attorney, Cecil H. Clegg, and appellee, Byron W.

Wood, petitioner, appearing by his attorney, Warren A. Taylor. Appellant presented certain oral and documentary testimony and evidence and rested, and petitioner, Byron W. Wood, as appellee, offered none. Thereupon said cause was argued before said Court by respective counsel and was taken under advisement by said Court. Thereafter, on October 9, 1946, said Court, having considered the arguments of counsel and the law and evidence upon the issue of whether or not the letter of decedent hereinafter described constitutes a contingent or absolute Will, filed its written opinion herein holding in favor of appellant and against appellee-petitioner.

Wherefore, by virtue of the law and the premises,

It Is Hereby Ordered, Adjudged, and Decreed That the letter dated [75] 9-26-31 written by J. M. Pearl, decedent above named, in his own handwriting, signed by him, and mailed by him from Washington, D. C., on September 27, 1931, addressed to Paul Greimann, Fairbanks, Alaska, is the true and valid Last Will and Testament of said decedent, J. M. Pearl, and is entitled to probate as such under the laws of Alaska, as heretofore adjudicated on the 6th day of March, 1945, by the Probate Court for the Fairbanks Precinct, Alaska; and

It Is Further Ordered, Adjudged, and Decreed That the Order and Decree of the said Probate Court made and entered on the 24th

day of July, 1946, in the above entitled probate proceeding pending in said Probate Court, numbered 1019, revoking, vacating, and setting aside said Order of March 6, 1945, admitting said letter to probate as the last will and testament of said decedent, J. M. Pearl, upon the ground that said letter was invalid as an absolute will of decedent and was merely a contingent or conditional Will in its terms and intent, be, and the same is hereby, vacated, set aside, and held for naught.

It Is Further Ordered, Adjudged, and Decreed That the finding and decree of said Probate Court to the effect that said letter is a conditional will and is of no legal force or effect as a last will and testament and, therefore, not entitled to probate as the last will and testament of said J. M. Pearl, deceased, be, and the same is hereby, reversed and set aside.

It Is Further Ordered and Adjudged That said appellant, Paul Greimann, have and recover his costs and disbursements upon said appeal proceeding, taxed by the Clerk of this Court at the sum of \$.....

It Is Further Ordered That the Clerk of this Court deliver to said Probate Court a true copy of this Decree, duly certified by said Clerk.

Dated at Fairbanks, Alaska, this 14th day of October, 1946.

.....

District Judge.

For all of which Byron W. Wood believes that he has been denied a right that he is entitled to, and denied a fair trial, and that the judgment and decree in the United States District Court for the Territory of Alaska, Fourth Judicial Division, is an error and should be reversed. Therefore prays an appeal to the Ninth Circuit Court of Appeals of the United States of America in this cause.

WARREN A. TAYLOR and  
BAILEY E. BELL,

By BAILEY E. BELL,  
Attorneys for Byron W.  
Wood, Appellant.

[Endorsed]: Filed Feb. 6, 1947. [76]

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[Title of District Court and Cause.]

RETURN

Received from Bailey E. Bell, attorney for Appellant, copy of the Assignment of Errors and Bill of Exceptions in the matter of the Estate of J. M. Pearl, deceased, No. 5524, and served each of them on Paul G. Greimann in person in Fairbanks, Alaska, on 6th day of February, 1947.

Dated at Fairbanks, Alaska, this 7th day of February, 1947.

STANLEY J. NICHOLS,  
United States Marshal.

By /s/ E. A. TONSETH,  
Office Deputy.

[Endorsed]: Filed Feb. 7, 1947. [77]

[Title of District Court and Cause.]

## BILL OF EXCEPTIONS

Byron W. Woods respectfully presents the following Bill of Exceptions for allowance and settlement upon the appeal taken from the rulings, orders and judgment of the Court as set forth in this Bill of Exceptions and as set forth in the Assignment of Errors and Notice of Appeal filed herein, the first of which this Appellant complains is as follows:

### I.

That the Court erred in taking jurisdiction in this case as on appeal for the reason that the judgment in the probate court on July 24, 1946, holding the letter as contingent and not a final will, had become final and no appeal was properly taken therefrom.

### II.

That the Court erred in taking jurisdiction of this case as on appeal when no appeal was properly taken from the Judgment and Decree of the Probate Court under date of July 24, 1946, by anyone having authority or right to take an appeal.

### III.

That the Court erred in taking jurisdiction in this case as if a proper appeal had been taken in that the record filed in this case in the United States District Court for the Territory of Alaska, Fourth Judicial Division, was insufficient to confer on said Court appellate jurisdiction in this to-wit: The

record contemplated by the Compiled Laws of Alaska, 1933, to be filed in the United States District Courts on Appeals, in Probate Cases, Chapter CLIV Sections 4571, 4572, 4573 and 4574 was never complied with as the record did not contain the following documents and instruments upon which [78] the United States Commissioner based her judgment of July 24, 1946, on to-wit:

a. The Depositions of Byron W. Wood, Lesta L. Fitch and H. C. Fitch taken in Oklahoma City, Oklahoma, in this cause in which it was established by the uncontradicted testimony that Mr. J. M. Pearl, now deceased, was living with his wife in Oklahoma City for quite some time before he died;

b. The Certified copy of the judgment of the District Court of Oklahoma County, Oklahoma, showing that the divorce decree between the now deceased, J. M. Pearl, and Musetta Wood Pearl, his wife, had been vacated and set aside, restoring them as man and wife; which decree was dated 7th day of May, 1942;

c. Certified and Authenticated copy of the laws of the District of Columbia as introduced in the trial before the United States commissioner in this case; which acts controlled the making of wills in the District of Columbia.

d. The Certified copy of the death certificate.



e. The Certified copies of the Letters of Administration issued to Byron W. Wood, by the County Court of Oklahoma County, Oklahoma, in the estate of Maurice O. W. Pearl, who it is shown to be the same man as J. M. Pearl, dated in Oklahoma County July 31, 1945.

#### IV.

The Court erred in decreeing that a letter dated 9-26-31 appearing to have been written by J. M. Pearl to Paul Griemann, to be the true and valid Last Will and Testament of J. M. Pearl, deceased, and entitled to probate under the laws of the Territory of Alaska.

#### V.

The Court erred in vacating and setting aside that certain Order of the Probate Court in the said cause; which the said Order of the Probate Court held, that the letter dated 9-26-31, written by J. M. Pearl, was a contingent or conditional will and not entitled to probate as the last will and testament, of the said decedent J. M. Pearl.

#### VI.

That the Court erred in reversing and setting aside the findings, judgment and decree of said Probate court to the effect that the said letter dated 9-26-31, was a conditional and contingent will, and was of no legal force and effect as the last will and testament of J. M. Pearl, deceased.

#### VII.

The Court further erred in making an order reversing the judgment and order made by the United



States Commissioner Ex-Officio Probate Judge [79] on July 24, 1946, in which the said Probate Judge made the following findings, Judgment and Order to-wit:

“That the purported Will heretofore admitted to probate in these proceedings is not an absolute last will and testament of said decedent, J. M. Pearl, but is a conditional Will and is of no legal force or effect and is not entitled to probate as the last will and testament of said J. M. Pearl.

That an Order should be made herein revoking that certain Order entered herein on March 6, 1945, admitting to probate said document above mentioned as the last will and testament of said J. M. Pearl.

That an Order should be made herein revoking that certain Order entered herein on March 6, 1945, admitting to probate said document above mentioned as the last will and testament of said J. M. Pearl, deceased, and denying, in all other respects, the Amended Petition of said Byron W. Wood.

Now, Therefore,

It Is Hereby Ordered, Adjudged, and Decreed That the following portion of that certain Order made and entered herein on the 6th day of March, 1945, entitled “Order Admitting Will to Probate and appointing Administrator with Will Annexed”, to-wit:

'It Is Hereby Ordered, Adjudged, and Decreed That the document hereinabove mentioned, and the envelope thereto attached, be, and is hereby, admitted to probate as the Last Will and Testament of said J. M. Pearl, deceased.'

be, and the same is hereby, set aside and annulled, and that, in all other respects, the Amended Petition of Byron W. Wood filed herein on December 27, 1945, be, and the same is hereby, denied.

Dated at Fairbanks, Alaska, this 24th day of July, 1946''.

[Probate Court Seal] ELEANOR M. ELY,  
United States Commissioner and ex-officio Probate Judge.

### VIII.

The Court erred in finding the letter to be an absolute will when the evidence did not justify such a finding, evidence as narrative is as follows:

Paul Greimann being the only witness, testified on direct examination by Cecil H. Clegg, his attorney of record: That his name was Paul Greimann. That he lived at Fairbanks, Alaska. Was in the automotive and bus transportation business. Was married, and had five children. That his place of business was at Second and Noble in the town of Fairbanks. Established there going on twenty-four years. That he had all equipment and facilities for taking care of and housing buses.

That he knew J. M. Pearl, the deceased first back about 1919, in Chicago, Illinois. Formed a friendship with him. Was associated with him up to 1930, was acquainted with him three years before coming to Alaska. Came to Fairbanks together, opened up the Pearl and Pearl Garage.

Mr. Pearl was about 19 years older than the witness. The witness was about forty-three years old when Mr. Pearl died. [80] He continued his friendship with him during his lifetime in Fairbanks. He lived out here on a farm that was bought by both he and I from Harry J. Busby in the winter of 1924, and owned by J. M. Pearl up to the time the army took it away from him here six years ago, or five years ago. In 1930 we had a dissolution of partnership. I bought out his equity in the Standard Garage and bought out the property on the corner of Lacey Street between First and Second. I transferred to him half of the 318-acre farm out there, which he contributed to the purchase thereof. I transferred to him one-half of the 318-acres, which is about three-quarters of a mile from Fairbanks. He lived there. Built a home there. It was taken over by the United States Army.

He left here to go to the States about six years ago, about the first of November. He was in ill health. He went to Oklahoma. Received a letter from him from Council Hill, Oklahoma, stating that he had gone to Council Hill. We had always been on friendly terms. I used to go back and forth to his place out on the farm, and he used to come into the business whenever he came into town to say

“hello”, sometimes he stayed an hour or so. He still regarded me in a friendly manner, and I regarded him the same way. I think it was through my recommendation that he left. He wasn’t looking any too good and said he wasn’t feeling good. I told him I didn’t see any reason why he should stay up here in the cold weather in the winter, and I says “why don’t you pack up your clothes and go outside for the winter”? That was the last trip outside. He went outside in 1931 for medical attention. He was in a hospital in Washington, D. C. He was a veteran of the Spanish-American War. After he was released from the hospital he came back to Fairbanks.

In September I received a communication from him, a letter through the mail, addressed to Paul Greimann, that letter is what this proceeding is based on.

He had no relatives here in Alaska. The only relatives that he had was, that he made mention of, was his brother Byron. That I never had any dealings with Byron Wood.

That I based my claim to the estate on this letter. That I had my final report ready to be confirmed when I heard from Byron W. Wood the first time. That I had heard from on one outside.

That I am the appellant in this matter appealing from the order of the Commissioner; that I am the person mentioned in the letter. Then a certified copy of the letter introduced; which is shown in Transcript and Proceedings filed herein at pages 21 to and including 24. The part of the letter relied upon as a will is as follows:

“I am sitting writing to you with a thermometer in my mouth as my temperature is to be taken every 2 hours. The nurse just brot it to me it is marked at 4 p.m. which is right at hand now. I started out to church today and got 3 blocks on my way when the eye-pressure commenced and I turned back no too soon either for both the head and breast ache commenced and were quite severe when I arrived back at the hospital and jumped into bed. In about an hour the spell was gone. My head still aches but the vision dimming is all gone again. [81]

We have to give reference as nearest of kin to be notified in case of death. I gave you my boy, and in case I die if they do operate I bequeath you my belongings and property all except \$100 to be given to Robert Galligher to help in his education. I would ask to be buried here in Arlington Cemetery. I do not expect to die but be on my way home by the 20th of Oct. or soon after as they are going right after my case properly.”

That this letter was in the handwriting of J. M. Pearl. That he and Pearl were in the garage business from '24 conducted under the name of Pearl and Pearl for some time. He suggested that I adopt his name. He called me son. I never adopted the name of Pearl, was always known as Greimann. We were always very friendly except when I got married, he disapproved of my getting married. “He thought I should have asked him to get married, and there was a little dissension between he and I at that time”. “However, while he never cared much for my wife, or liked my wife very well,

so far as that was concerned I think we were always on friendly terms.' No open break between us. When I got the letter above referred to I put it in my safe in the garage. When he died I waited some time to see if anybody would be appointed to take care of his estate before application was made. 'I figured that if he was in Council Hill and his brother was there that he must have—— I at least thought that I would have had some kind of a wish or some kind of a tip that he wanted his brother to handle it, so I figured that at any time we might receive that notice, so therefore I never entered into it until there wasn't anything showed up.

His was farm land separated off in lots and some being sold for homes out there. He was engaged in the real estate business to the extent of selling a portion of his property that he had acquired personally.

On Cross-Examination by Mr. Taylor. He testified that he was no relation to J. M. Pearl. That as he recalled Mr. Pearl returned to Fairbanks the next spring after he went out for medical attention in 1931. Don't recall that he ever said anything about the letter he had written, relied upon here as a will. That Mr. Pearl told him he had a wife living in Oklahoma. He also said he was divorced. He came back to Fairbanks in '32. He assumed jurisdiction and control of his property from then on up until the time he left. He did seek me for advice at times, but he made the final disposition of anything pertaining to his affairs. He advised me about having a brother in Oklahoma at Council



Hill. Mr. Pearl never advised the witness that the divorce decree was set aside and of his resuming marital relationship with his wife.

I believe he died July 8, 1944, That he relied upon the part of the letter that states, "and in case I die if they do operate I bequeath you my belongings and property" to be the last will and testament. He was not operated on at that time and couldn't, then, have died from the operation. He died from paralysis in 1944. We divided the 318-acres of land, he took his half and I took mine. He assigned over his interest down were the garage was to me; that was in 1930.

On Redirect Examination of Mr. Griemann by the Court: He testified that he and Mr. Pearl came to Alaska, in 1923, established a home here in Fairbanks and voted at the elections. He never abandon that home to the knowledge of the witness. When he went outside to the hospital he said he would be back as soon as he . . . he came back and continued to vote at the elections. [82]

The next time he went out was 1940. He had had a slight stroke a couple of years before that and his health wasn't any too good, and he would have to pack the wood out there, and so forth, out out there on the ranch, and I said, "there is no use in you staying here. You have plenty to take care of yourself. Why don't you go outside? And he said, "I don't know but what I will do that." He said, "It will save a lot of anxiety," and then, he says, "nobody will have to come out and be looking after me all of the time in the wintertime to see that I have plenty of fuel." So about a week after that he



left. He left his home and everything here. I heard from him later, he said he intended to come back the following spring. He said he had bought a small house and small track of land, about five acres in Oklahoma. That it was nice and warm out there, and that he was enjoying the climate very much, but that he would be back in the spring. That would be the spring of 1941. It appears that he took sick shortly after he wrote this letter because I didn't receive any communications from him afterwards, with the exceptions of a postcard of some scene around Oklahoma City. He ask me why I didn't write; he hadn't heard from me for a long time; and that was the last communication I received. I never kept either one of them. I think the next I heard was through Mr. Clegg here, that he was ill. That was about three years ago this summer.

When I got back from the outside I learned of his death on July 8.

He had property in Alaska when he wrote the letter in 1931, and had property here at the time of his death. The property had been taken by the army at the time of his death and money had been deposited in Court in payment of it; around \$10,000.00. They had taken the land in 1941. The only part of the estate that existed here was the money deposited in the Court. I never made inquiries about the Oklahoma property.

On Cross-Examination of Mr. Greimann by Mr. Taylor: He testified that he didn't know that he resided in the state of Oklahoma with his wife. He

didn't return to the Territory of Alaska. I think he was in a veteran's hospital in Muskogee.

On Further Examination of Mr. Greimann by the Court: He testified "that he died in a Veteran's Hospital in Muskogee, Oklahoma. He went in there shortly after he left Alaska, must have been some time in the spring of 1941. He know my children and was fond of them. It was his habit to give them a dollar on their birthday, if he knew when it was or if it was mentioned. He continued to call me "son" always or "Paul, boy."

In the letter above mentioned he called me "Dear Paul, boy," and he signed it as "J. M. Pearl" or "dad", because I always called him "Dad", sometimes he signed it just "Dad", and this letter was signed dad and J. M. Pearl.

Further Cross-Examination of Mr. Greimann by Mr. Taylor: That sometimes he signed J. M. Pearl and sometimes J. M. O. W. That he was in the probate court in Fairbanks when the depositions were read.

## IX.

The Court further erred in making and entering the Decree on October 14, 1946; which is as follows:

"No. 5525

## DECREE

Be It Remembered That this cause came on to be heard before the above entitled Court on the 2nd day of October, 1946, appellant, Paul Greimann, individually and as Administrator with [83] Will

Annexed of the Estate of J. M. Pearl, deceased, appearing in person and by his attorney, Cecil H. Clegg, and appellee, Byron W. Wood, petitioner, appearing by his attorney, Warren A. Taylor, Appellant presented certain oral and documentary testimony and evidence and rested, and petitioner, Byron W. Wood, as appellee, offered none. Thereupon said cause was argued before said Court by respective counsel and was taken under advisement by said Court. Thereafter, on October 9, 1946, said Court, having considered the arguments of counsel and the law and evidence upon the issue of whether or not the letter of decedent hereinafter described constitutes a contingent or absolute Will, filed its written opinion herein holding in favor of appellant and against appellee-petitioner.

Wherefore, by virtue of the law and the premises,

It Is Hereby Ordered, Adjudged, and Decreed That the letter dated 9-26-31 written by J. M. Pearl, decedent above named, in his own handwriting, signed by him, and mailed by him from Washington, D. C., on September 27, 1931, addressed to Paul Greimann, Fairbanks, Alaska, is the true and valid Last Will and Testament of said decedent, J. M. Pearl, and is entitled to probate as such under the laws of Alaska, as heretofore adjudicated on the 6th day of March, 1945, by the Probate Court for the Fairbanks Precinct, Alaska; and

It Is Further Ordered, Adjudged, and Decreed That the Order and Decree of the said Probate Court made and entered on the 24th day of July,

1946, in the above entitled probate proceeding pending in said Probate Court, numbered 1019, revoking, vacating, and setting aside said Order of March 6, 1945, admitting said letter to probate as the last will and testament of said decedent, J. M. Pearl, upon the ground that said letter was invalid as an absolute will of decedent and was merely a contingent or conditional Will in its terms and intent, be, and the same is hereby, vacated, set aside, and held for naught.

It Is Further Ordered, Adjudged, and Decreed That the finding and Decree of said Probate Court to the effect that said letter is a conditional will and is of no legal force or effect as a last will and testament and, therefore, not entitled to probate as the last will and testament of said J. M. Pearl, deceased, be, and the same is hereby, reversed and set aside.

It Is Further Ordered and Adjudged That said appellant, Paul Greimann, have and recover his costs and disbursements upon said appeal proceeding, taxed by the Clerk of this Court at the sum of \$.....

It Is Further Ordered That the Clerk of this Court deliver to said Probate Court a true copy of this Decree, duly certified by said Clerk.

Dated at Fairbanks, Alaska, this 14th day of October, 1946.

HARRY E. PRATT,  
District Judge.

## X.

Thereafter, and on the 21st day of October, 1946, a notice of appeal was duly served and filed in this cause; which is in words and figures as follows: [84]

“In the District Court for the Territory of Alaska, Fourth Division.

No. 5525

In the Matter of the Estate of  
J. M. PEARL, Deceased.

Filed in the District Court, Territory of Alaska,  
4th Div., Oct. 21, 1946. John B. Hall, Clerk.

## NOTICE OF APPEAL

Name and Address of Appellant: Byron W. Wood, Council Hill, Oklahoma.

Name and Address of Appellant's Attorneys: Bailey E. Bell, Fairbanks, Alaska; Warren A. Taylor, Fairbanks, Alaska.

Name and Address of Appellee: Paul Greimann, Fairbanks, Alaska.

Name and Address of Appellee's Attorney: Cecil H. Clegg, Fairbanks, Alaska.

Notice is hereby given that Byron W. Wood, petitioner in the above entitled cause does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit of the United States of America, from a Decree entered in the above entitled action on the 14th day of October, 1946, and for grounds of appeal alleges as follows:

I.

That the Court erred in decreeing a letter dated 9/26/31, written by J. M. Pearl to be the true and valid Last Will and Testament of J. M. Pearl, Deceased, and entitled to probate under the laws of the Territory of Alaska.

II.

That the Court erred in vacating and setting aside that certain order of the Probate Court in the said cause, which said order of the probate Court held that the letter, dated 9-26-31 written by J. M. Pearl was a contingent or conditional will and not entitled to probate as the Last Will and Testament of the said decedent, J. M. Pearl.

III.

That the Court erred in reversing and setting aside the findings and decree of said probate court to the effect that the said letter was a conditional or contingent will and was of no legal force and effect as the Last Will and Testament of J. M. Pearl.

Dated at Fairbanks, Alaska, this 18th day of October 1946.”

WARREN A. TAYLOR,  
Of Plaintiff's Attorneys.

Service of copy acknowledged this 21st day of October, 1946.

CECIL H. CLEGG,  
Attorney for Paul Greimann



Thereafter, and on the 19th day of December, 1946, Petition for Allowance of Appeal was filed, which is as follows:

“In the District Court for the Territory of Alaska, Fourth Division.

No. 5524

In the Matter of the Estate of  
J. M. PEARL, Deceased.

Filed in the District Court, Territory of Alaska, 4th Div., Dec. 19, 1946. /s/ John B. Hall, Clerk.

#### PETITION FOR ALLOWANCE OF APPEAL

The petitioner in the above entitled cause, considering himself aggrieved by the decree entered in the said cause on the 14th day of October, 1946, in favor of the administrator of the Estate of J. M. Pearl, Deceased, which said decree reversed and set aside the Order and Decree of the Probate Court for the Territory of Alaska, Fourth Division, Fairbanks Precinct, which found and decreed that a certain letter written by the decedent, J. M. Pearl, was not a true and valid will of deceased; and which order and decree of said probate court revoked its previous order admitting the said letter to probate as the Last Will and Testament of deceased. That the District Court for the Territory of Alaska further ordered and decreed that the said letter was a true and valid will of the decedent, J. M. Pearl, and entitled to probate under the laws of the Territory of Alaska. By said Decree the issues



were determined in favor of the Administrator of said Estate of Decedent and against the petitioner and appellant, Byron W. Wood.

The petitioner having given due notice of appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified and set forth, does respectfully pray that his said appeal may be allowed, and that a transcript of the records, proceedings and papers upon which said decree was made and entered, be duly authenticated by the Clerk of this Court, and sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California; and this said petitioner, Byron W. Wood, does further pray that said decree aforementioned be corrected, set aside, reversed and a new trial ordered, and that the Court fix the amount of appeal bond to be filed herein.

Dated at Fairbanks, Alaska, this 19th day of December, 1946.

/s/ WARREN A. TAYLOR,

Of Attorneys for Petitioner.

Due Service of the foregoing Petition, admitted this — day of October, 1946, by receipt of copy thereof.

Attorney for Administrator.

## XII.

Then on the 19th day of December, 1946, Order Allowing Appeal and fixing appeal Bond was

signed by the Trial Judge and filed herein, which is as follows to-wit:

“In the District Court for the Territory of Alaska, Fourth Division.

No. 5524

In the Matter of the Estate of  
J. M. PEARL, Deceased.

Filed in the District Court, Territory of Alaska, 4th Div., Dec. 19, 1946. John B. Hall, Clerk.

### ORDER ALLOWING APPEAL AND FIXING APPEAL BOND

On this 2nd day of October, 1946, the same being one of the days of the General March, 1946, Term of this Court, this cause came on regularly to be heard upon the petition of Byron W. Wood for the allowance of an appeal in behalf of the said petitioner from the decree entered in the said cause on the 14th day of May, 1946, which said decree reversed a decree of the Probate Court for the Territory of Alaska, Fourth Division, Fairbanks Precinct, in the said matter, and also fixing the amount of appeal bond on the said appeal, and the place of hearing said appeal, and the said Court being fully advised [86] in the premises it is hereby finds that the amount of the appeal bond should be Two Hundred Fifty (\$250.00) Dollars, Now, Therefore,

It Is Hereby Ordered That the appeal of said petitioner from the decree entered herein on the 14th day of October, 1946, be, and the same is al-

lowed, to the United States Circuit Court of Appeals for the Ninth Circuit, and that a certified transcript of records, proceedings, orders, judgment, testimony, and all other proceedings in said matter on which said decree appeared from is based, be transferred, duly authenticated to the United States Circuit Court of Appeals for the Ninth Circuit and therein filed and said cause docketed on or before thirty (30) days from this date, to be heard at San Francisco, California, and

It Is Further Ordered That the amount of the Appeal Bond be, and is hereby fixed at the sum of \$250.00; said bond to be submitted and approved by the undersigned Judge of this Court; and

It Is Further Ordered that in preparing and printing the record on appeal in said cause, the title of the Court and cause shall be printed on the first page of said record, and that thereafter it may be omitted, and, in place thereof, the words "Title of Court and Cause" may be inserted, and that all endorsements on all papers may be omitted except the Clerk's filing marks and admission of service.

Done in Chambers on this 19th day of December, 1946."

HARRY E. PRATT,  
District Judge.

Service of the foregoing Order allowing Appeal and Fixing Amount of Appeal Bond admitted this . . . . day of October, 1946, by receipt of copy thereof.

Entered in Court Journal No. 34, Page 314-315,  
Dec. 19, 1946.

## XIII.

Thereafter, the Trial Judge being absent from the Territory of Alaska, and on application and showing duly made the time for taking and filing of Appeal in this case was by an order of the United States Circuit Court of Appeals extended to March 1st, 1947; a copy of said order is as follows, to-wit:

“In the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

No. 5525

In the Matter of the Estate  
Of  
J. M. Pearl, Deceased

ORDER EXTENDING TIME TO FILE,  
RECORD AND DOCKET CAUSE ON APPEAL

On motion of the appellant in the above entitled cause, by Warren A. Taylor, one of his attorneys, for an order extending the time to file, record and docket the said cause on appeal in this court, it appears to this Court that by reason of the absence of counsel from the Territory of Alaska, and the absence of the District Judge for the Territory of Alaska, Fourth Division from the Territory of Alaska renders it impossible for the said cause to be filed, recorded and docketed in this court within the time allowed by law; and the Court being fully advised in the premises and good cause [87] appearing therefor;

It Is Hereby Ordered that the time within which

the record on appeal in this case shall be deposited and filed in this Court with the Clerk thereof, and said cause docketed therein, be, and the same is extended and enlarged to and including the 1st day of March, 1947.

Dated at San Francisco, California, this 8th day of January, 1947."

/s/ FRANCIS A. GARRECHT,  
United States Circuit Judge.

A True Copy. Attest: Jan. 8, 1947.

/s/ PAUL P. O'BRIEN,  
Clerk.

[Endorsed]: Filed Jan. 8, 1947.

XIV.

Thereafter, and on the . . . . day of February, 1947, this appellant, Byron W. Wood, filed Assignment of Errors, which are incorporated in the Transcript and made a part of this Bill of Exceptions by reference as fully as if set out herein.

XV.

On the 19th day of December, 1946, Appeal Bond was duly filed herein and is set out in the Transcript of the Record and made a part of this Bill of Exceptions by reference as fully as if set out herein in full.

XVI.

That Rules No. 42 and 60 of the rules of the District Court of the Territory of Alaska, Fourth Judicial Division, are as follows:

## Rule 42. Exceptions in Civil Cases

Whereas the laws of Alaska relative to civil procedure provide:

(a) Section 3636, Compiled Laws of Alaska, 1933: "No exception need be taken or allowed to any decision upon a matter of law when the same is entered in the journal or made wholly upon matters in writing and on file in the court."

(b) Section 3637, Compiled Laws of Alaska, 1933: "The verdict of the jury, any order or decision, partially or finally determining the rights of the parties, or any of them, or affecting the pleadings, or granting or refusing a continuance, or granting or refusing a new trial, or admitting or rejecting the evidence, provided objection be made to its admission or rejection at the time of its offer, or made upon ex parte application or in the absence of a party, Are Deemed Excepted to Without the Exception Being Taken or Stated, or Entered in the Journal."

It shall not be necessary for counsel to take exceptions in such cases, but, if they so wish, they may in making up a bill of exceptions for the same, show that the exception was duly taken. [88]

## Rule 60. End of Term

(a) The period of time provided for the doing of any act or the taking of any proceedings



is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of this court to do any act or take any proceedings in any civil or criminal action which has been pending before it.

(b) Any and all undisposed of matters of any nature, pending in this court at the termination of any term, shall be continued over to the next term, and the situation respecting the same shall in no wise be affected by the termination of any term or terms.

Byron W. Wood respectfully contends that the Court erred in the proceedings herein, where each assignment of error is complained of in the Assignment of Errors filed in this cause, and each of the matters set out in this Bill of Exceptions, and prays a reversal of the judgment in the above entitled cause, and that a proper judgment be rendered herein, based upon the pleadings, records and evidence.

WARREN A. TAYLOR and  
BAILEY E. BELL,

/s/ By BAILEY E. BELL,

Attorneys for Byron W.  
Wood, Appellant.

#### CERTIFICATE

The within and foregoing Bill of Exceptions, together with the exhibits thereto attached is hereby settled and allowed and is approved and certified as a correct record of the evidence produced at the



trial of the case and a correct statement of such proceedings, pleadings, ruling and exceptions in said cause during the trial and both prior and subsequent thereto as are deemed necessary by the respective parties to present clearly the matters for review as to which exceptions are reserved, and as are included in the record herein.

It is further certified, that such bill was settled and allowed during the judgment-term or proper extensions thereof, and within the time allowed by the Courts, for the settlement thereof.

Given under my hand this . . . . day of February, 1947.

-----  
District Judge.

[Endorsed]: Lodged and filed Feb. 6, 1947. [89]

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[Title of District Court and Cause.]

#### PRAECIPE FOR TRANSCRIPT OF RECORD

To John B. Bail, Clerk of the above-entitled Court:

You will please prepare transcript of record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, setting in San Francisco, California, heretofore perfected to said Court and include therein the following papers and records to-wit:

1. The transcript in full as prepared by Eleanor M. Ely, United States Commissioner Ex-Officio Pro-

bate Judge, which transcript was filed in above Court on August 15th, 1946, which includes: The letter of 9-26-31, which contended by appellant, Paul C. Greimann, Administrator with will annexed, to be the last will and testament of J. M. Pearl. The Order admitting will to probate and appointing administrator with will annexed. The amended petition for removal of administrator, contest of purported will, to set aside admission of will to probate and application to set for hearing, filed on behalf of Byron W. Wood, with all exhibits attached thereto.

2. The Answer of Paul C. Greimann, Administrator with will annexed.

3. The Reply filed by Byron W. Wood.

4. Application for permission to take depositions.

5. The objections to issuance of commission to take depositions.

6. Order overruling objections to issuance of commission to take depositions.

7. Order and Decree revoking Order of March 6, 1945, admitting to probate a certain document dated 9-26-31, and envelope attached thereto as Last Will and Testament of decedent.

8. Notice of Appeal of Paul C. Greiman, Administrator with will annexed, and Exceptions of Paul C. Greimann, Administrator to decree revoking order.

9. Transcript of Testimony and proceedings.

10. Order to draw judgment.

11. Decree.

12. Notice of Appeal to the Ninth Circuit Court of Appeals. [90]

13. Petition for Allowance of Appeal.
14. Order allowing Appeal and Fixing Appeal Bond.
15. Appeal Bond.
16. Order Extending time by Circuit Court of Appeals.
17. Assignment of Errors showing service thereof.
18. Bill of Exceptions showing service thereof.
19. Praecipe for transcript of record.
20. Citation on Appeal showing service.
21. Order refusing to sign and settle Bill of Exceptions.
22. Letter from Bailey E. Bell to Judge Harry E. Pratt.
23. Order as refiled refusing to sign Bill of Exceptions.

This transcript is to be prepared as required by the law and the rules and orders of this Court, and of the Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, so that it will be docketed therein, on or before, the 1st day of March, 1947, pursuant to the order of this Court and the order of the Ninth Circuit Court of Appeals.

Dated at Fairbanks, Alaska, this 24th day of February, 1947.

WARREN A. TAYLOR and  
BAILEY E. BELL,

/s/ By BAILEY E. BELL,

Attorneys for Byron W.  
Wood, Appellant.

[Endorsed]: Filed Feb. 24, 1946. [91]

In the District Court for the Territory of Alaska,  
Fourth Judicial Division

No. 5524

In the Matter of the Estate  
Of  
J. M. Pearl, Deceased

CITATION

The President of the United States of America,  
To Paul C. Greimann, Administrator with Will  
annexed, and Paul C. Greimann, and your attorney  
of Record, Cecil H. Clegg, Greetings:

You are hereby cited to be and appear in the  
United States Circuit Court of Appeals for the  
Ninth Circuit, to be holden in the City of San Fran-  
cisco, State of California, within Forty (40) days  
from the date of this Citation, pursuant to an  
order allowing an appeal, made and entered in the  
above case on the 19th day of December, 1946. In  
which Byron W. Wood was the petitioner and con-  
testant of the will, and is the appellant here, and  
Paul C. Greimann, Administrator with will an-  
nexed, is the appellee, to show cause, if any there  
be, why the judgment rendered in said cause, on the  
14th day of October, 1946, in favor of Paul C. Grei-  
mann, Administrator with will annexed, and against  
Byron W. Wood, contestant of the will, the appel-  
lant here, and to show why said judgment should  
not be corrected, set aside and reversed, and why  
speedy justice should not be done, to contestant and  
appellant, Byron W. Wood, and appellee, Paul C.  
Greimann, Administrator with will annexed, as  
above-named.

Witness the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States of America, on this 20th day of February, 1947.

Attest my hand and the seal of the above-named District Court for the Territory of Alaska, Fourth Judicial Division, on the 20th day of February, 1947.

/s/ HARRY E. PRATT,  
District Judge.

[Endorsed]: Lodged Feb. 6, 1947. Filed Feb. 20, 1947. [92]

[Title of District Court and Cause.]

#### MARSHAL'S RETURN ON CITATION

I, Stanley J. Nichols, United States Marshal for the Territory of Alaska, Fourth Judicial Division, do hereby certify and return that I received the hereto attached Citation at Fairbanks, Alaska, on the 20th day of February, 1947, and that thereafter on the 21st day of February, 1947, I duly served the same, by delivering a true copy thereof to Paul C. Grieman, personally at Fairbanks, Alaska.

Dated at Fairbanks, Alaska, this 21st day of February, 1947.

STANLEY J. NICHOLS,  
United States Marshal.

By JOHN J. BUCKLEY,  
Deputy.

Marshal's Fees, \$3.00.

[Endorsed]: Filed Feb. 21, 1947. [92-a]

[Title of District Court and Cause.]

ORDER REFUSING TO SIGN AND SETTLE  
BILL OF EXCEPTIONS

Whereas judgment was entered herein upon the 14th day of October, 1946, but no proposed bill of exceptions was filed herein until the 6th day of February, 1947, and no order extending the time for filing such proposed bill of exceptions was made within three months of the entry of said judgment or at any time whatsoever except upon the 11th day of February, 1947; and

Whereas the laws of Alaska (Chap. 61, P. 131, Chap. 44, P. 114, Session Laws of Alaska 1937; Buckley vs. Verhonic 82 F. (2d) 730) require such proposed bill of exceptions to be filed in the cause within three months of the entry of judgment therein; and

Whereas said proposed bill of exceptions has not been served upon the adverse party or his attorney though Rule 41 of this Court requires such service prior to the filing thereof and gives the adverse party ten days after such service within which to file objections or proposed amendments to proposed bills of exceptions; and

Whereas it appears that the power to extend the time for filing said proposed bill of exceptions did not upon the 11th day of February, 1946, exist in any court and it further appears that under said Rule 41 this Court has no authority to consider a proposed bill of exceptions prior to its being served upon the adverse party or his attorney;



Now, Therefore, it is hereby adjudged that no power exists in this court or a judge thereof to settle said bill of [93] exceptions under the above-mentioned conditions.

Done in chambers at Fairbanks this 20th day of February, 1947.

/s/ HARRY E. PRATT,  
District Judge.

[Endorsed]: Filed Feb. 20, 1947. [94]

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LETTER FROM BAILEY E. BELL TO JUDGE  
HARRY E. PRATT

Honorable Harry E. Pratt,  
Judge of the United States District Court,  
Fairbanks, Alaska.

Dear Sir:

I have just been given a copy of the order, made by you yesterday, in the matter in the estate of J. M. Pearl, deceased, and beg to call your attention to the following cases which are more directly in point from the standpoint of facts than the case you relied on in the order:

Stickel vs. United States, 294 Fed. 808.

United States vs. Tucker, 65 Fed. 2nd, 661.

Howard vs. Louisiana & A. Ry. Co., 49 Fed. 2nd, 571.

In the third paragraph in your order it is stated that, "The proposed bill of exceptions has not been served upon the adverse party or his attorney." This is an error as the records, clearly show, that the United States Marshal served the assignment of errors and the proposed bill of exceptions on Paul

C. Greimann personally, on the 6th day of February, 1947.

Rule 41 was complied with by the Marshal serving Mr. Greimann personally, since the Honorable Cecil H. Clegg, his attorney, had previously left the Territory of Alaska, and was somewhere in the Continental United States, and more than ten days has expired since the proposed bill of exceptions and assignment of errors were duly served by the Marshal, therefore, the above cited cases clearly show, that you have a perfect right and authority to sign and settle this bill of exceptions now.

Possibly you did not know that the United States Circuit Court of Appeals, at San Francisco, made an order on January 8, 1947, extending time to file and record this case, to March 1, 1947; then made another order extending time for filing and settling the bill of exceptions to February 25th was made on February 11, 1947.

Of course, this still being in the same term in which judgment was rendered, and your Honor recessing court on December 19th, and you leaving the Territory of Alaska to return about the 17th or 18th of February, 1947, prevented the submission to you of the bill of exceptions until your return [95] to the Territory, and to your district, therefore, there being no neglect or lack of diligence on the part of the Appellant it is our contention that you should settle and sign the bill of exceptions now and let opposing counsel raise the question of jurisdiction in the Ninth Circuit Court of Appeals with a motion to strike, or any other remedy he cares to use. This is especially true

since the rules of the United States Circuit Court of Appeals effect appeals from Alaska, even if they do not effect trial procedure here, and the Territorial Statute relied on by you could not override the rules of the U. S. Circuit Court of Appeals. This is especially true since this is still within the same term of Court in which the judgment was rendered.

Respectfully submitted,

/s/ BAILEY E. BELL,

Of Counsel for Appellant.

[Endorsed]: Filed Feb. 21, 1947. [96]

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[Title of District Court and Cause.]

ORDER AS REFILED REFUSING TO SIGN  
BILL OF EXCEPTIONS

For good cause shown, the order heretofore entered herein by this court upon the 20th day of February, 1947, is hereby amended to read as follows, to-wit:

Whereas judgment was entered herein upon the 14th day of October, 1946, but no proposed bill of exceptions was filed herein until the 6th day of February, 1947, and no order extending the time for filing such proposed bill of exceptions was made within three months of the entry of said judgment or at any time whatsoever except upon the 11th day of February, 1947; and

Whereas the laws of Alaska (Chap. 61 P. 131, Chap. 44, P. 114, Session Laws of Alaska, 1937;

Buckley vs. Verhonic 82 F. (2d) 730) require such proposed bill of exceptions to be filed in the cause within three months of the entry of judgment therein; and

Whereas it appears that the power to extend the time for filing said proposed bill of exceptions did not upon the 11th day of February, 1947, exist in any court;

Now, Therefore, it is hereby adjudged that no power exists in this court or a judge thereof to settle said bill of exceptions under the above-mentioned conditions.

Done in chambers at Fairbanks this 21st day of February, 1947.

/s/ HARRY E. PRATT,  
District Judge.

[Endorsed]: Filed Feb. 21, 1947. [97]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF THE DISTRICT COURT TO TRANSCRIPT OF RECORD

I, John B. Hall, Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, do hereby certify that the foregoing, consisting of 99 pages, including pages 60a and 92a, constitutes a full, true, and correct transcript of the record on appeal in Cause No. 5524, entitled In the Matter of the Estate of J. M. Pearl, Deceased, and was made pursuant to and in accordance with the Prae-

cipe of the Appellants, filed in this action, and by virtue of the said Appeal and Citation issued in said cause, and is the return thereof in accordance therewith, and

I do further certify that the Index thereof, consisting of page "a," is a correct index of said Transcript of Record, and that the list of attorneys, as shown on page "b," is a correct list of the attorneys of record; also that the cost of preparing said transcript and this certificate, amounting to \$8.25 has been paid to me by counsel for the appellants in this action.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 24th day of February, 1947.

[Seal]      /s/ JOHN B. HALL,  
Clerk, District Court, Territory of Alaska, 4th Division.

[Endorsed]: No. 11553. United States Circuit Court of Appeals for the Ninth Circuit. Byron W. Wood, Appellant, vs. Paul Greimann, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, Fourth Division.

Filed February 27, 1947.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.